140-515
140-515

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1890.

No. 134.

MOLLIE N. OYSTER, WILLIAM E. OYSTER, AND DAVID K. OYSTER, APPELLANTS,

vs.

GEORGE OYSTER, MARGARET OYSTER, MARGARETTA OYSTER, EXECUTRIX OF SIMON OYSTER, DECEASED; GEORGE OYSTER, ADMINISTRATOR OF SIMON K. OYSTER, DECEASED, AND IOLA E. OYSTER.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF MISSOURI.

FILED OCTOBER 3, 1887.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1890.

No. 134.

MOLLIE N. OYSTER, WILLIAM E. OYSTER, AND DAVID K. OYSTER, APPELLANTS,

vs.

GEORGE OYSTER, MARGARET OYSTER, MARGARETTA OYSTER, EXECUTRIX OF SIMON OYSTER, DECEASED; GEORGE OYSTER, ADMINISTRATOR OF SIMON K. OYSTER, DECEASED, AND IOLA E. OYSTER.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF MISSOURI.

INDEX.

	Original.	Print.
Citation	1	1
Proof of service of citation	1½	1
Caption	2	1
Bill of complaint	2	2
Appearance for defendants	36	21
Demurrer of George Oyster to part of bill	36	21
Plea of George Oyster	39	22
Demurrer to plea submitted	44	25
Order overruling demurrer to plea	45	26
Order setting motion to dismiss for hearing	45	26
Motion to dismiss	46	26
Demurrer to bill submitted	46	26
Final decree	47	27
Order allowing appeal	47	27
Order approving bond, &c.	48	27
Appeal bond	48	28
Opinion of Judge Brewer	50	29
Memorandum by the clerk as to demurrer to plea	51	29
Clerk's certificate	52	30

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., JULY 28, 1890.

1 The United States of America to George Oyster, Margaret Oyster, Margaretta Oyster, executrix of the last will of Simon Oyster, deceased; Simon K. Oyster, and Iola E. Oyster:

Whereas Mollie N. Oyster, William E. Oyster, and David K. Oyster have lately appealed to the Supreme Court of the United States from a decree lately rendered in the circuit court of the United States for the eastern district of Missouri, made in favor of you, the said George Oyster, Margaret Oyster, Margaretta Oyster, executrix of the last will of Simon Oyster, deceased; Simon K. Oyster, and Iola E. Oyster, and have filed the security required by law:

You are therefore hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the second Monday of October next, to do and receive what may appertain to justice to be done in the premises.

Witness the Honorable Amos M. Thayer, judge of the district court of the United States for the eastern district of Missouri, this 18th day of May, in the year of our Lord one thousand eight hundred and eighty-seven.

AMOS M. THAYER,
Judge United States District Court,
Eastern District of Missouri.

1½ [Endorsed:] No. 2512. United States circuit court, eastern division of the eastern district of Missouri. Mollie N. Oyster *et al. vs.* George Oyster *et al.* Citation. Filed May 18, 1887. A. P. Selby, clerk.

Return.

UNITED STATES OF AMERICA,
Eastern Division of the Eastern Judicial District of Missouri, } *ss:*

I hereby certify that I have executed this writ on the 24 day of May, A. D. 1887, by delivering a certified copy of same to John W. Dryden, attorney of record for the within-named defendants, at St. Louis, in above district.

J. E. D. COUZINS, *U. S. Marshal.*
WALTER ATKINSON, *Dept.*

1 service	2 00
1 M. travel	06
	$2 06

2 UNITED STATES OF AMERICA,
Eastern Division of the Eastern Judicial District of Missouri, } *ss:*

In the Circuit Court of the United States in and for the Eastern Division of said District.

Be it remembered that on the fifteenth day of April, A. D. 1885,

the following, among other, proceedings were had and appear of record in the circuit court of the United States in and for the eastern district of Missouri, to wit:

MOLLIE N. OYSTER *et al.*, Complainants,
vs.
GEORGE OYSTER *et al.*, Respondents.

Now come the complainants, by James Carr, their solicitor, and file their bill of complaint herein.

Said bill of complaint is in words and figures following, to wit:

In the Circuit Court of the United States, Eastern District of Missouri.

To the judges of the circuit court of the United States for the eastern district of Missouri, in equity:

Your oratrix, Mollie N. Oyster, and your orators, William E. Oyster and David K. Oyster, all citizens of the county of Lewis,
3 State of Missouri, bring this their bill of complaint against George Oyster, Margaret Oyster, Margaretta Oyster, executrix of the last will and testament of Simon Oyster, deceased; Simon K. Oyster, and Iola E. Oyster, his wife, all citizens and inhabitants of the State of Pennsylvania, and they cannot be found within said district; and thereupon your oratrix and orators complain and say—

That Abraham Oyster, late of Lewis county, Missouri, *who* departed this life on the 10th day of August, 1882, seized in fee simple of a large amount of real and personal property, among others the real estate hereinafter described, first having made and published his last will and testament on the 8th day of August, 1882, which was duly probated in the county court of Lewis county, Missouri, on the 21st day of October, 1882, in and by which he made the following devises:

It is my will that all my real estate, part of which is situate in Cumberland county, State of Pennsylvania, a part in Pike county, State of Illinois, and a part in Lewis and Marion counties, in the State of Missouri—Island No. 14, in the Mississippi opposite the city of La Grange, is not included in this clause—be taken possession of as soon as may be by the executors of this will, and that all such parts thereof as can shall be leased or rented until such time as in the judgment of said executors it will sell for fair prices, when they will proceed to sell said real estate to the best advantage, all of which they are hereby authorized to bargain, sell, and alien in fee simple, and out of the proceeds of such sales and rents—

1. I hereby give and bequeath to my daughter, Margaret Oyster, ten thousand dollars ($10,000.00).

2. I give and bequeath to my son, George Oyster, ten thousand dollars ($10,000.00).

3. Of the remainder of the proceeds of the sales and rents
4 aforesaid I give and bequeath to my sons, Simon Oyster, George Oyster, and David K. Oyster, and my daughter, Margaret Oyster, each an equal portion; but it is my will that the por-

tion that falls to my son, David K. Oyster, my executors shall so dispose of that only the interest annually shall be paid to him; also that the saw-mill in the city of La Grange shall, until such time as my executors shall deem it proper to sell it as the other real estate, *shall* be rented to my son, David K. Oyster, at a fair sum, or to some other person.

Also that my executors collect all the debts owing to me, and out of such collections pay all expenses of the executorship, including all fees, &c.

I do hereby appoint as executors of this will my son, George Oyster, and my son-in-law, Charles Oyster, both of the county of Cumberland and State of Pennsylvania; that George Oyster and Charles Oyster, the executors named in said last will and testament, at the date of probating of said last will and testament were citizens of the county of Cumberland, State of Pennsylvania, and in consequence of their citizenship were disqualified to act as executors of said last will and testament under the laws of the State of Missouri, said testator being at the time of his death domiciled in the State of Missouri. On the same day on which said last will and testament was probated your orator, David K. Oyster, a citizen of said county of Lewis, in the State of Missouri, was appointed by said county court of Lewis county, Missouri, administrator of the estate of said Abraham Oyster, deceased, with said will annexed, and thereupon he duly qualified and took upon himself the administration of said estate and the execution of said last will and testament. At the date of the death of said Abraham Oyster as aforesaid he left four
5 children surviving him as his only heirs-at-law, to wit, Margaret Oyster, George Oyster, David K. Oyster, and Simon Oyster.

Plaintiffs state further that in 1859 Abraham Oyster gave in money or its equivalent $5,000 each to George Oyster, Margaret Oyster, and Simon Oyster, and he conveyed by deed, with covenant of warranty, to said George Oyster a section of said land in Lewis Co., Mo., for which the consideration was expressed to be $5,000, and also a half section of land in the State of Illinois, the consideration for which was expressed to be $4,000; to Margaret Oyster the like amount of land in Lewis county, Mo., and also the like amount of land in the State of Illinois; to Simon Oyster the like amount of land in Lewis county, Missouri, and also the like amount of land in the State of Illinois. Although the deed to each of said grantees expressed a money consideration therefor as aforesaid, still plaintiffs aver the fact to be that there was no money or other consideration of value paid by said grantees to said Abraham Oyster; that the only consideration for said deed was the natural love and affection which said Abraham Oyster bore for said grantees, who were his children, and said sums indicated the amount of his estate with which they respectively should be charged Said Abraham Oyster did not at the time of making said gifts of money and land or at any other time convey to the plaintiff, David K. Oyster, any land or give him any money or property of any kind to put him on an equality with said George, Margaret, and Simon Oyster, although

said Abraham Oyster prior to his making said will had often expressed his intention that he would so make his will as to give the children of said David K. Oyster an equal share of his estate with said George, Margaret, and Simon Oyster, and that said David K. Oyster was to have the use and income therefrom during said David K.'s life. When said Abraham Oyster made his will, as
6 hereinbefore copied, being at the point of death, he forgot that he had given money and had conveyed land to said George, Margaret, and Simon as aforesaid, and in consequence thereof neither the plaintiff, David K. Oyster, nor his children got an equal share or anything like an equal share in the estate of said Abraham Oyster under said will; neither did Simon Oyster get an equal share with said George and Margaret Oyster in said will.

Said Simon Oyster and David K. Oyster were not satisfied with the provisions of said will, and said Simon Oyster, on the 18th day of April, 1886, instituted a suit in the circuit court of Lewis county, in the State of Missouri, to have said will set aside and declared null and void. While said suit was pending said Simon Oyster died, first having made and published his last will and testament, by which he appointed his wife, Margaretta Oyster, executrix of his last will and testament, with full power to dispose of and settle up said estate, and said will was duly probated in the orphans' court of Dauphin county, Pennsylvania, and said Margaretta Oyster took upon herself the execution of said will. On the third day of March, 1868, said heirs and legatees of Abraham Oyster, deceased, to wit, Margaret Oyster, George Oyster, and Margaretta Oyster, executrix of the last will and testament of Simon Oyster, deceased, and your orator, David K. Oyster, entered into an agreement in writing, which was drawn by George Oyster, modifying said will, which agreement is in words and figures as follows:

Agreed this 3rd day of March, A. D. 1868, between Charles Oyster and Margaret Oyster, his wife; George Oyster, David K. Oyster, and Margaretta Oyster, executrix of Simon Oyster, deceased, late of Harrisburg, Pennsylvania, heirs and legatees of Abraham Oyster, deceased, late of La Grange, Lewis county, Missouri.

Witnesseth that the said Abraham Oyster did execute
7 his last will and testament on the 8th day of August, A. D. 1882, and — was filed for record in the county of Lewis and State of Missouri on the 21st day of October, A. D. 1862, and did bequeath unto Margaret Oyster, wife of Charles Oyster, ten thousand dollars, and unto George Oyster a like sum of ten thousand dollars, which said bequests proved unsatisfactory to Simon Oyster and David K. Oyster, and that Simon Oyster and David K. Oyster *and that Simon Oyster* did make objections to the validity of said will of Abraham Oyster, as may be seen by reference to the records of Lewis county, Missouri, which suit was pending at the time of said Simon Oyster's decease; and now, for the purpose of effecting a speedy settlement of said estate and for many other good considerations, we, the

subscribing parties, have this day above written agreed that Margaretta Oyster, executrix of Simon Oyster, dec'd, and David K. Oyster shall pay unto Margaret Oyster, wife of Charles Oyster, and to George Oyster the just sum of five thousand dollars in equal parts of twenty-five hundred dollars to each and in consideration of Simon Oyster, dec'd (during his lifetime), George Oyster, and Margaret Oyster, wife of Charles Oyster, having received of our father, Abraham Oyster, advancements in property in East Pennsborough township, Cumberland county, Pennsylvania, of five thousand dollars each; also six hundred and forty acres of land in Lewis county, Missouri; also three hundred and twenty acres each in Illinois, and that David K. Oyster did not receive an equivalent therefor; it is agreed that we, Margaret, wife of Charles Oyster, George Oyster, and Margaretta Oyster, executrix of Simon Oyster, deceased, do or cause to be made titles to David K. Oyster for all the right, title, interest, and claim whatsoever accruing to the estate of Simon Oyster, dec'd, and unto George Oyster and Margaret, wife of Charles Oyster, into or out of the following
8 property of the estate of Abraham Oyster, deceased, viz: Six hundred and forty acres of unimproved prairie land in Lewis county, Missouri; also the northwest quarter of section 7, township 6, range 3 west, containing 160 acres; also the southwest quarter of section 12, township 4, range 7 west, containing 160 acres, both of said quarters situated in Pike county and State of Illinois; also lot of ground beginning at south end of La Fayette St., in the town of La Grange, Lewis county, Mo., running 3 chains 88 links north along said street to a stake; thence east to a stake at the corner of said Oyster mill lot; thence south 11½ degrees east 3 chains 88 links to a stake; thence west to place of beginning, — by reference to deed of Louthan and Waltman to Abraham Oyster will more fully appear; also one acre of land adjoining the above, — by reference to deed from C. F. Marlow to Abraham Oyster will in full and at large appear; also lot No. 3 and fractional lot No. 4 of block 5, Waltman and Louthan Addition to town of La Grange, said land and lots being the same on which steam saw-mills are built in town of La Grange, Mo., upon the payment of eleven hundred and twenty-five dollars, $1,125.00, by the said David K. Oyster to the estate of Abraham Oyster, deceased; also that the said David K. Oyster receive five thousand dollars of said estate, and that in consideration of the foregoing propositions being fully complied with by the contracting parties that all the balance or remains of the estate of Abraham Oyster, deceased, be equally divided to Margaret Oyster, wife of Charles Oyster; George Oyster, the heirs of Simon Oyster, deceased, and David K. Oyster in equal parts, and that the said will of Abraham Oyster be fully executed except the devises to Margaret and George Oyster of ten thousand dollars each and so much as relates to the steam saw-mill in the town of La Grange, Mo.; and it is further agreed, in consideration of the above premises, that
9 the suit to contest the validity of the will of Abrahm Oyster, deceased, be forever abandoned.

In witness whereof we hereunto set our hands and seals this day and year above written.

GEORGE OYSTER. [SEAL.]
D. K. OYSTER. [SEAL.]
M. OYSTER. [SEAL.]
CHARLES OYSTER. [SEAL.]
MARGARET OYSTER. [SEAL.]

Sealed and delivered in presence of—
C. A. SNYDER.

That, in pursuance of said agreement, afterwards, to wit, on the thirteenth day of April, 1868, said suit in the circuit court of Lewis county, Missouri, to set aside and declare said last will and testament of Abraham Oyster, deceased, null and void was dismissed.

Afterwards, to wit, on the 15th day of November, 1869, said David K. Oyster, as administrator of the estate of Abraham Oyster, deceased, with the will annexed, in the due execution of the powers contained in said last will and testament, and also in pursuance and by authority of said contract made and entered into by and between the heirs and legatees of said Abraham Oyster, deceased, dated March 3rd, 1868, as aforesaid (having first duly advertised the same for sale for four weeks by advertisement in the La Grange American, a newspaper duly published in said Lewis county, and also by printed handbills set up all over Lewis county in public places), offered all the real estate belonging to the estate of Abraham Oyster, deceased, situate, lying, and being in the county of Lewis, State of Missouri, for sale to the highest bidder at Monticello, the county-seat of said county, for one-third cash and the remainder in three equal annual payments, the deferred payments to bear interest at the rate of six per cent. per annum. A day or two before said sale took place said Margaret Oyster, George Oyster, David K. Oyster, and Margaretta Oyster, executrix of Simon Oyster, deceased, heirs and legatees of said Abraham Oyster, deceased, were all present at the residence of David K. Oyster, in Lewis county, Missouri, and had a consultation among themselves — to the best method of carrying out the provisions of said will and contract — the speedy settlement and distribution of the estate of Abraham Oyster, deceased, at which consultation it was fully agreed upon by all of said heirs and legatees of said Abraham Oyster, deceased, that at said sale David K. Oyster should bid in, for the benefit of his children herein named, what was then known as the "home farm" of Abraham Oyster, deceased, at and for the price of $12,000.00, and also bid in, for the benefit of his said children, six hundred and forty acres in Oyster prairie, in said county, which said property is herein fully described; that at said conference it was understood and agreed between said heirs and legatees that the said home place and the six hundred and forty acres in Oyster prairie *was* to be bid in for the children of said David K. Oyster in order to make them equal in the distribution of said estate with the other legatees who had, previous to the death of said Abraham Oyster, received advancement from said Abraham Oyster. Afterwards, at said sale, the first piece of property that was offered

for sale by the crier was the said home place, and David K. Oyster, in accordance with the agreements before made, bid on said property for the benefit of his said children; that thereupon he was informed by the clerk of the circuit court of said county that he could not become a purchaser of said property, because he was making said sale as administrator with the will annexed, and that he could not bid at his own sale nor convey property to himself; that thereupon the sale was stopped and the legatees of said
11 Abraham Oyster, deceased, to wit, Margaret Oyster, George Oyster, and Margaretta Oyster, executrix of Simon Oyster, deceased, then and there had a consultation among themselves in regard to said sale and the proper method of carrying out their said agreement of the day or two before; that at said consultation it was agreed upon by all said heirs and legatees that Simon K. Oyster, one of the defendants herein, should bid in said home farm and the six hundred and forty acres in Oyster prairie before mentioned for the benefit of the said children of David K. Oyster and act in that behalf for them instead of David K. Oyster, their father, and said David K. Oyster then and there relinquished all right, title, claim, and interest in and to said property under and by virtue of said will of Abraham Oyster, deceased, and said agreement made and entered into the third day of March, 1868, as hereinbefore stated, for the benefit of his said children; that after said agreement was made Simon K. Oyster, who was not then present, was sent for and informed of the agreement confiding said trust to him, and he objected to acting as said trustee. After persuasion on the part of his mother, Margaret Oyster, defendant herein, and the other legatees of said Abraham Oyster he consented on the consideration that as soon as convenient there should be appointed a trustee to hold said property and relieve him from said trust, which was agreed to by all said heirs and legatees; that thereupon said sale, as advertised, was proceeded with, and said home farm was bid in by said Simon K. Oyster under said agreement as trustee for the benefit of the children of said David K. Oyster, at the price of $12,000.00; that the next piece of property put up was the six hundred and forty acres of land in Oyster prairie; that said Simon K. Oyster made a bid on said land; that Thomas Ammerman, citizen of said county of Lewis, also made bids on said land;
12 that thereupon the defendant, George Oyster, requested the crier to stop the sale and took said Ammerman aside and requested him not to bid on said land, as it was being sold only to make title in order to vest the title in Simon K. Oyster for the benefit of the children of David K. Oyster and divest the same out of the estate of Abraham Oyster, deceased; that the children of David K. Oyster were entitled to the property under the agreement made between the heirs and legatees of Abraham Oyster, deceased, and said children of David K. Oyster would get it, no matter what it sold for; that thereupon said Ammerman declined to bid further, and Simon K. Oyster then bid in six hundred and forty acres of land in Oyster prairie in accordance with said agreement for $3,200.00 for the benefit of the children of David K. Oyster. The

crier then proceeded to offer other tracts of land in Oyster prairie. After selling a few pieces to different purchasers the sale was adjourned for dinner.

That on account of the prices for land not being satisfactory to the heirs and legatees of Abraham Oyster, deceased, it was then and there further agreed between them, all of said heirs and legatees of Abraham Oyster, deceased, consenting and agreeing thereto, that the remainder of the property in Oyster prairie be put up and sold, and that it be bid in by any of the said heirs without reference to prices or location, and that in order that said property in Oyster prairie should be equally divided between the heirs and legatees of Abraham Oyster it was agreed that three appraisers should be appointed to go with the county surveyor upon the said lands in Oyster prairie and appraise each piece and divide the whole of the remainder of said lands into four equal parts. The sale by D. K. Oyster, as administrator as aforesaid, was then proceeded with,
13 and most of the property was bid in by heirs and legatees of Abraham Oyster, deceased, promisc-ously; only a few pieces of land sold to persons not heirs and legatees as aforesaid, they having bid prices for said property satisfactory to said heirs and legatees. Other property, consisting of town lots and other pieces of property not in Oyster prairie, *were* sold and bid in by the respective heirs and legatees at such prices as were offered, and, with the exception hereinafter mentioned, deeds were made to the purchasers at said sale by said David K. Oyster. After said sale was completed, in accordance with the agreement to appoint appraisers, as hereinbefore stated, William Rickert, Kerry Baldwin, and John McCullom were selected by the heirs and legatees of Abraham Oyster, deceased, as such appraisers; that said appraisers went with the county surveyor of Lewis county, accompanied by all of the heirs and legatees of Abraham Oyster, deceased, upon the lands in Oyster prairie which were about to be divided, and said appraisers then and there appraised each piece of said land and divided the whole into four equal parts as near as possible, putting the valuation on each part; that thereupon it was mutually agreed between the said heirs and legatees of Abraham Oyster, deceased, that George Oyster should have the privilege of first choosing and selecting his one-fourth of said lands so divided by said appraisers; that the second choice should be made by Margaret Oyster; that the third choice should be made by Margaretta Oyster, executrix of Simon Oyster, deceased, and the remainder should be taken by Simon K. Oyster for the benefit of the children of David K. Oyster, in accordance with their said agreement, which was accordingly then and there done; and subsequently, on the sixth day of June, 1870, David K. Oyster, as administrator, with the will annexed, of Abraham Oyster, deceased, made deeds to the said respective parties for the property purchased by them at said adminis-
14 trator's sale, including the property purchased by Simon K. Oyster, as trustee for David K. Oyster's childen, and also at the same time made deeds to the heirs and legatees of Abraham Oyster, deceased, and to Simon K. Oyster, as trustee for the children

of David K. Oyster, to the property appraised and divided by said appraisers as aforesaid and selected by the said heirs, as hereinbefore set forth, treating said property in said conveyance as if the same had been bid in by said parties at said administrator's sale; that said partition, sale, and conveyance were satisfactory to and acquiesced in by all the heirs and legatees of Abraham Oyster, deceased, and they took possession of said land thereunder and continued from that time until the present in possession thereof and repeatedly recognized said proceeding by accepting, occupying, improving, and selling portions of said land so conveyed to them by virtue of the agreement hereinbefore stated; that subsequently, to wit, on the 11th day of September, 1871, the circuit court of Lewis county, State of Missouri, appointed one Edward P. Robinson, of said county, as trustee for the children of David K. Oyster, to take said property so purchased at said sale and set apart by said appraisers to Simon K. Oyster for the benefit of the children of David K. Oyster, and authorized him to receive said property at the prices which it was conveyed to said Simon K. Oyster, and said trustee duly qualified and demanded that Simon K. Oyster convey said lands to him; that the defendant, George Oyster, fraudulently intending and craftily designing to prevent the transfer of said property to said trustee in accordance with said agreement, persuaded said Simon K. Oyster to decline to convey said property to said trustee, and said Simon K. Oyster, acting under the influence of the defendant, George Oyster, declined to convey the said property to said trustee; that subsequently, to wit, on the — day of ——, 18—, said Robinson departed this life without having begun proceedings to compel said conveyance.

That in pursuance of said agreement — said heirs and legatees of Abraham Oyster, deceased, said David K. Oyster, on the 6th day of June, 1870, in the due execution thereof and of the powers and directions contained in the will of said Abraham Oyster, deceased, and the agreement between said heirs and legatees made on the 3rd day of March, 1868, conveyed said lands to said Simon K. Oyster as aforesaid; but in conveying said lands said administrator made him an absolute deed of conveyance, which was duly acknowledged and delivered to the said Simon K. Oyster and recorded in the recorder's office of Lewis county, Missouri, on the 4th day of April, 1871; but Simon K. Oyster took and received said deed with the distinct understanding and agreement that he was to hold the legal title to said lands for the exclusive use and benefit of the children of David K. Oyster and for no other purpose, he not paying any consideration for said lands nor agreeing to pay any and having no interest therein, except to hold the legal title to the same as trustee for said children, the said title being taken and held by him for the convenience of said children. It is true said deed recites and acknowledges the payment of twenty-one thousand dollars by said Simon K. Oyster to said David K. Oyster as the consideration therefrom; but in truth and in fact said Simon K. Oyster never paid to said David K. Oyster the sum mentioned in said deed or any other sum or any consideration whatever for said deed,

and there was no consideration for said deed but said mutual agreement made by and between said heirs and devisees on the 15th day of November, 1869, for the purpose of dividing the lands belonging to the estate of said Abraham Oyster, deceased, as hereinbefore stated, and the speedy settlement of said estate and the relinquishment of the right, title,
16 and interest of said David K. Oyster therein to his said children. Said Margaret Oyster, George Oyster, and Margaretta Oyster, executrix of the last will and testament of Simon Oyster, deceased, with full knowledge of the conveyance made by said David K. Oyster to said Simon K. Oyster for the use and benefit of the children of said David K. Oyster, as hereinbefore stated, approved, and acquiesced in said conveyance from the time thereof until the 10th day of February, 1881, when said Simon K. Oyster, trustee for the children of said David K. Oyster as aforesaid, contrary to his duty and in violation of the trust confided to and reposed in him by said parties as aforesaid, made, duly acknowledged, and delivered a deed to said George Oyster, conveying the legal title to said lands to said George Oyster; said lands are hereinafter described; that the said lands so conveyed by said David K. Oyster, administrator, with the will annexed, of Abraham Oyster, deceased, to said Simon K. Oyster, as trustee, for the benefit of the children of said David K. Oyster are the following-described lands, situate in the county of Lewis, State of Missouri, and within said eastern district of Missouri, to wit: The west half of the northwest fractional quarter, the southwest quarter, and the southeast fractional quarter — number six; the north half, the southeast quarter, and the east half of southeast quarter of section No. 7 and the southwest quarter of section No. 8, all in township No. 60 north, in range No. 5 west; the east half of the northeast quarter and the north half of the southeast quarter of section No. one, in township No. 60 north, in range No. six west; the east half of the southwest quarter of section No. 36, in township No. 61 north, in range No. 6 west; the west half of the south-
17 west quarter of section No. 2; the west half of the northwest quarter and the southwest quarter of the southwest quarter of section No. 3; the northeast quarter of the southeast quarter and the northeast quarter of the southeast quarter of section No. 4; the west half of the southwest quarter, the east half of the northwest quarter, and the northeast quarter of section No. 8; the west half of the northwest quarter and the northeast quarter of section No. 8; the west half of the northeast quarter of section No. 11; the northwest quarter of the southwest quarter of section No. 12 and the northwest quarter of the southeast quarter of section No. 20, in township No. 60 north, in range No. 8 west; the southeast quarter of section 31 and the southwest quarter of section No. 32, in township No. 60 north, in range No. 9 west; also a piece of ground known as Oyster mill lot, containing an acre, more or less, meted and bounded as follows: Begin-ing on the bank of the Mississippi river at the large maple tree marked "A," thence down said river eleven and one-half degrees east twenty rods and two and one-half feet to a stake; thence north 78½ degrees west six rods and two feet to a stake;

thence north 11½ degrees west twenty-five rods and two and one-half feet to a stake, and thence to the place of begin-ing; and also a piece of ground begin-ing at the south end of Waltman and Louthan's Addition to La Grange, on Lafayette street, running thence 3 chains and 88 links north with said street to the corner of A. Oyster's mill lot; thence south 11½ degrees east three chains and eighty-eight links to a stake, and thence west to the place of begin-ing; and also lots three and four, in block No. 5, in Waltman's and Louthan's Addition to the town of La Grange, in said county of Lewis.

18 Complainants aver that afterwards, to wit, in the winter of 1880 and 1881, said George Oyster, craftily and subtly designing and intending to cheat and defraud the children of David K. Oyster out of said lands and of their right, title, and interest therein conveyed to Simon K. Oyster in trust, as hereinbefore stated, prevailed upon and induced said Simon K. Oyster (his wife joining with him), in violation of his duty as trustee of the children of David K. Oyster as aforesaid, on the 10th day of February, 1881, to convey the legal title to said lands as above particularly described to him, said George Oyster, for the nominal consideration of five dollars, but which sum never was paid by said George Oyster to said Simon K. Oyster, nor did said George Oyster pay any other sum or any valuable consideration whatever to said Simon K. Oyster for making said conveyance of the said lands; but said George Oyster acted in bad faith and took said conveyance with full knowledge of said contract of March 3rd, 1880, and the mutual agreement between the heirs and devisees of said Abraham Oyster, deceased, made the 13th day of November, 1869, as hereinbefore stated, which resulted in the conveyance of the legal title to said lands to said Simon K. Oyster as aforesaid, with full knowledge of the trust upon which said Simon K. Oyster took, acquired, and held the legal title to said lands, and with the full knowledge of the equitable rights of the children of said David K. Oyster in and to said lands, as hereinbefore stated.

Said deed from said Simon K. Oyster and wife to said George Oyster was written by said George Oyster and has the following trust and conditions expressed therein, viz: "In trust, nevertheless, that he, the said George Oyster, party of the second part, shall and

19 may with all reasonable diligence proceed to recover and take possession of and dominion over said lands, premises, and appurtenances, and the same sell to whomsoever he may, in mass or in parcels, for such price or prices as he may deem advisable to take, and the purchase-money of such sale or sales receive and conveyance in (for) fee simple of the lands sold to make to the purchaser or purchasers thereof, and out of the purchase-money he may pay the reasonable expenses of the execution of this trust, and the residue of such purchase-money shall be held and considered as assetts in his hands as executor in the State of Pennsylvania of the last will of Abraham Oyster, deceased, late of the county of Lewis and State of Missouri, and be distributed and payable by him in manner as directed by said will to the legatees of said will in such proportion and shares as the legatees would at the time of the con-

templated distribution be entitled in the like amount of the distributive assets of the estate of said testator."

But plaintiffs aver that said trust and considerations were and are not the trust and conditions upon which said David K. Oyster, as administrator as aforesaid, conveyed the legal title to said Simon K. Oyster to said real estate, nor the trust and conditions upon which said Simon K. Oyster took and received the title thereto, and that said Simon K. Oyster took and received the legal title to said real estate upon the trust and conditions hereinbefore expressed and upon no other trust and conditions. Plaintiffs aver that said trust and conditions are in direct violation of said contract of March 3rd, 1868, and the mutual agreement made and entered into between the said heirs and legatees of said Abraham Oyster, deceased, on the 15th day of November, 1869, as hereinbefore stated, and that they were intended and designed for the express purpose of cheating and defrauding the children of
20 the said David K. Oyster and David K. Oyster himself out of the just rights acquired by said contract of March 3rd, 1868, and said mutual agreement made and entered into on the 15th day of November, 1869, and were designed and intended to secure to said George Oyster and Margaret Oyster, the mother of said Simon K. Oyster, an unfair and unjust share of the estate of said Abraham Oyster, deceased, in the final settlement thereof; and said George Oyster denies that said Simon K. Oyster took and received the legal title to said real estate clothed with the trust in favor of the children of said David K. Oyster, as herein stated, or with any trust in favor of David K. Oyster; and said George Oyster also denies that he took and received the legal title to said real estate by said deed from said Simon K. Oyster and wife to him as aforesaid clothed with the trust in favor of said children, as hereinbefore stated, or any trust in favor of David K. Oyster; and he has set up and claimed ever since the making to him of said deed as aforesaid and he still sets up and claims that said real estate is not subject to any trust in favor of said children or said David K. Oyster, and he says that neither said children nor said David K. Oyster have any title, right, or interest in or to said real estate under or by virtue of said contract of March 3rd, 1868, and said mutual agreement of November the 15th, 1869, but he entirely repudiates and ignores both said contract and said mutual agreement.

Plaintiffs aver that said George Oyster now holds the legal title to said lands as trustee in his own wrong for the use and benefit of the children of said David K. Oyster, and that he has no equitable right, title, claim, or interest in or to said lands of the kind mentioned in said deed in any respect whatever; that at the time
21 of making said sale, partition, and conveyance of said property to said Simon K. Oyster by said David K. Oyster as aforesaid the children of said David K. Oyster were and still are Iola E. Oyster, Mollie N. Oyster, and William E. Oyster, and were all under age and unmarried and lived with their father and natural guardian, David K. Oyster, who was in the possession of said property so conveyed to said Simon K. Oyster as such trustee at the time of the

conveyance thereof as aforesaid; that said Iola E. Oyster subsequently intermarried with said Simon K. Oyster and removed to the State of Pennsylvania; that Mollie N. Oyster and William E. Oyster, children of said David K. Oyster aforesaid, have always lived with said David K. Oyster, who was in possession of said lands so conveyed to said trustee, and said David K. Oyster has been in the actual possession and enjoyment of said land ever since the said conveyance to said Simon K. Oyster as trustee until the 23rd day of February, 1885, when said David K. Oyster was put out of possession of all of said real estate except the 157 acres in section No. 1, in township No. 60, range 6 west, by the marshal of this court on an execution issued by the clerk of this court on the 20th day of February, 1885, on a judgment rendered at the March term, 1883, of this court in favor of said George Oyster as plaintiff and said David K. Oyster as defendant, as hereinafter more fully stated; that said David K. Oyster, after the conveyance of said real estate to said Simon K. Oyster as aforesaid, remained in possession of all of said real estate by the desire and consent of his said children for their use and benefit until he was dispossessed of the portion as aforesaid. He is still in the possession of the said 157 acres of land in section No. 1, township 60, range 6 west, and holding the same by the
22 desire and consent of his said children for their use and benefit. Said George Oyster, in pursuance of his intention to cheat and defraud the children of said David K. Oyster out of said lands and for the purpose of harassing and annoying David K. Oyster and turning him out of possession of said land, did, on the 28th day of February, 1883, institute an action of ejectment against said David K. Oyster in the circuit court of the United States within and for the eastern district of Missouri, returnable to the March term thereof, 1883, for the lands hereinbefore particularly described by numbers except the property in section No. 1, township No. 60, range 6 west.

When said action of ejectment was brought your orators were advised by *consent* that by reason of said deed of conveyance from Simon K. Oyster to George Oyster that the legal title to said property was vested in said George Oyster, and that said David K. Oyster had no legal defense to said action of ejectment, and that by reason of the rules of practice obtaining in the United States circuit court that they could not set up the facts alleged as an equitable defense to said action of ejectment; that thereupon, by the advice of counsel, a stipulation was entered into between said George Oyster and said David K. Oyster to let judgment go for the possession of said lands and one cent damages and the value of the rents and profits to be found by the court, and said George Oyster agreed not to issue an execution on said judgment until the 1st day of May, 1884, in order that complainants might have time to file this bill setting up their equitable rights to said land and show what reason they had, if any, why said George Oyster should not have possession of said lands under said judgment; that plaintiffs did, on the 6th
23 day of September, 1883, commence a suit in equity against the defendants in this court to have said George Oyster en-

joined from taking possession of said lands under his said judgment, to have said George Oyster declared a trustee of said lands for plaintiffs, to divest him of the legal title thereto, and to vest the legal title thereto in the said children of David K. Oyster; but because an appeal had been taken from the judgment of the probate court of Lewis county, Missouri, to the circuit court of said county on the 7th and final settlement of David K. Oyster, as administrator of the estate of Abraham, deceased, and a writ of error had been sued out by David K. Oyster from the supreme court of Missouri to the circuit court of Lewis county, Missouri, to review and reverse the judgment of said circuit court and to have a new trial granted on said settlement, and because said writ of error was pending and the accounts of said David K. Oyster, as administrator as aforesaid, were unsettled and the sum of the assets in the hands of David K. Oyster belonging to the estate of Abraham Oyster, deceased, unascertained, and some other technical objections, this honorable court declined to pass any decree on the merits of said cause, but, on the first day of December, 1884, it dismissed the plaintiffs' bill without prejudice to any rights which they had under said will and under said contract of March the 3rd, 1868.

Said George Oyster, not contented with dispossessing David K. Oyster of said lands as aforesaid, on the 17th day of February, 1885, commenced an action of ejectment in this court against said David K. Oyster to eject him from the east half of the northeast quarter and the north half of the southeast quarter of section No. 1 (one), township 60 north, range 6 west, upon which he has been re-
24 siding with his children ever since he conveyed the lands in controversy to Simon K. Oyster as aforesaid, and on the 6th day of April, 1885, he recovered judgment for the possession thereof, $1,256.00 damages for the detention thereof, and $52.33⅓ monthly value of the rents and profits thereof, and he threatens to have an execution issued on said judgment and have the plaintiff, David K. Oyster, ejected from said real estate and to take possession and use and enjoy the same for his own use and purposes, contrary to said trust, as hereinbefore stated, and contrary to his duty under said trust, and plaintiffs believe that he will carry said threat into execution unless he shall be enjoined and restrained from doing so by the order of this honorable court.

That an appeal from the judgment of the probate court of Lewis county, Missouri, rendered on the 7th and final settlement of David K. Oyster, as administrator as aforesaid, on the — day of ——, 187–, to the circuit court of said county was taken, and upon a trial *de novo* in said circuit court, at which the defendants, George, Margaret, and Margaretta Oyster, appeared by their attorney and disputed and contested not only said last and final settlement, but also all previous settlements, said circuit court referred all of the accounts of David K. Oyster to a referee, who examined the same carefully, corrected such as in his judgment were not correct, and charged him with items which had been omitted, and then made a full report thereof to said circuit court. Mutual exceptions were filed to said report by both parties, and upon a full and fair hearing of said ex-

ceptions by said circuit court it sustained some of the exceptions of David K. Oyster and overruled others, and it also sustained some of the exceptions of said George, Margaret, and Margaretta Oyster and overruled others, and then it corrected said settlement, and on the 3rd day of April, 1880, rendered final judgment thereon;
25 that in and by said judgment David K. Oyster was charged with the sale of the real estate at the sum of $37,511 and with the further sum of $8,436.04 on account of personalty, making the aggregate sum of $45,947.04 with which he was charged, and it then gave him credit to the sum of $21,994.04; *having* a balance of 23,953.04 in his hands; that in and by said judgment said circuit court expressly found that the defendants, George, Margaret, and Margaretta, had never paid David K. Oyster anything for or on account of the real estate which he had sold and conveyed to them individually and collectively; that he had never received the consideration named in the deed to Simon K. Oyster or any part thereof (the land embraced in said deed being the same that was conveyed by said Simon K. Oyster to George Oyster); that David K. Oyster had in his hands on account of personalty as assets of said estate the sum of $3,438.04 and no more, and the sum of $20,515 on account of realty for distribution among the legatees of said Abraham Oyster, deceased; that on the 15th day of January, 1885, David K. Oyster dismissed said writ of error in the supreme court of Missouri, and thereby left said judgment of said circuit court of Lewis county, Missouri, in full force and effect.

That in and by said contract of March the 3rd, 1868, the defendants, George, Margaret, and Margaretta Oyster, executrix as aforesaid, agreed to pay to the plaintiff, David K. Oyster, the following real estate, situate in the county of Pike and State of Illinois, viz: The northwest quarter of section 7, township 6, and range 3 west, and the southwest quarter of section 12, township 4, range 7 west, containing in all 320 acres; that George Oyster, as executor as aforesaid, on the 3rd day of December, 1869, sold the northwest quarter of section 7, township 6, and range 3 west to James M. Petty
26 for $2,000 cash, and he charged himself with said money in his supplemental account filed in the orphans' court of Cumberland county, Pennsylvania, as assets of said estate instead of conveying said quarter section of land to David K. Oyster according to said contract; and at the time of making said contract, to wit, March the 3rd, 1868, neither said parties to said contract nor said estate had any title to said southwest quarter of section 12, township 4, and range 7 west, and said George, Margaret, and Margaretta, as executrix, never conveyed any title to David K. Oyster, as they agreed to do by said contract, in order to put him and his children upon an equality with said George, Margaret, and Margaretta, as executrix as aforesaid. Plaintiffs aver that said contract was entered into with the full belief that neither said estate nor the said parties defendant had a good title to said quarter section of land, and that they could make or have made a good title thereto to said David K. Oyster; that said quarter section of land was worth at the time of entering into said contract the sum of $2,000 or more; that the

children of David K. Oyster are now of age; that the plaintiffs are ready and willing to settle the accounts of David K. Oyster, as administrator as aforesaid, on the basis of such judgment of the circuit court of Lewis county, Missouri, correcting, ascertaining, and fixing the amount of assets in his hands belonging to the estate of Abraham Oyster, deceased as aforesaid, and if, upon a hearing of this cause, he shall be found indebted to said estate after allowing all credits and allowances to which David K. Oyster and his said children are entitled under said contract of March the 3rd, 1868, modifying said will as aforesaid and said mutual agreement of November the 15th, 1869, plaintiffs hereby offer to pay to the de-
27 fendants, George, Margaret, and Margaretta Oyster, executrix as aforesaid, such indebtedness.

Plaintiffs further state that said Abraham Oyster, in addition to his estate in Lewis county, Missouri, owned considerable property, real, personal, and mixed, in Cumberland county, Pennsylvania, and also some real estate in Pike county, Illinois, at the time of his death as aforesaid; that the defendant, George Oyster, being a citizen of Cumberland county, Pennsylvania, obtained a duly certified copy of said will of Abraham Oyster, deceased, and of the probate thereof in the county court of Lewis county, Missouri, as hereinbefore stated, and had said copy of said will and the probate thereof, on the — day of ——, 186–, duly entered on record in the office of the register of wills of Cumberland county, Pennsylvania, in conformity with the statute of the State of Pennsylvania in such cases made and provided, and on the — day of ——, 186–, he took out letters testamentary thereon in the orphans' court of said county (Charles Oyster, the other executor named in the will, not qualifying) and administered on said property belonging to the said Abraham Oyster in said county of Cumberland, in the State of Pennsylvania, and also on said real estate in said county of Pike, in the State of Illinois; that said administrator was ancillary to the administration on the estate of said Abraham Oyster by the plaintiff, David K. Oyster, in Lewis county, Missouri; that said George Oyster, in his capacity of executor as aforesaid, sold and converted into money all of the property, real, personal, and mixed, belonging to said estate in Cumberland county, Pennsylvania, and also in Pike county, Illinois, and on the 18th day of September, 1867, he filed his first account as executor of said will in said orphans' court of Cumberland county, Pennsylvania, showing a
28 balance of $15,948.70 in his hands after paying all the expenses of his said administration and other proper charges, and on the 12th day of February, 1873, he filed his second and supplemental account as executor as aforesaid, showing that he had on the 3rd day of December, 1869, sold the land in Pike county, Illinois, belonging to said estate for the sum of $2,000, making the aggregate sum of $17,948.70 in his hands, he not having charged himself with any interest on said money, as he should have done; that in said account he took and received credits to the sum of $17,948.70; that of said sum he was properly only entitled to credit for the sum of $992.95; that the remainder of said credits, to wit, the sum of

$16,955.75, was improperly taken, as hereinafter more fully shown; that the defendant, George Oyster, in his said supplemental account, with the intent and for the purpose of cheating and defrauding the plaintiffs and of obtaining a false and unjust credit in his accounts as executor as aforesaid, obtained a credit of $2,000 principal and $1,560 interest for the amount of the consideration mentioned in the deed of the said Abraham Oyster to him, George Oyster, dated December 9th, 1859, whereby said Abraham Oyster conveyed to said George Oyster the northeast quarter of section No. 7, township 3 north, range No. 2 east, in Fulton county, Illinois, containing 160 acres, the title to which failed after the death of said Abraham Oyster; that said orphans' court never appointed an administrator *ad litem* to contest said claim of George Oyster or to represent or protect the interest of said estate against said claim of George Oyster, and said estate was not represented at all by any person when said credit was obtained and taken by said George Oyster. Plain-
29 tiffs aver, upon information and belief, that Abraham Oyster had a good title to said quarter section of land at the time of conveying it to said George Oyster as aforesaid, and that the title to it was lost by the neglect of George Oyster to take possession immediately after said land was conveyed to him and assert his title to it. They also aver that said George Oyster not having paid any money or valuable consideration for said land, that he was not entitled to recover the sum mentioned in said deed or any part thereof. They also aver that said orphans' court not having appointed an administrator *ad litem* to represent and protect the interest of said estate when said George Oyster asked and obtained said credit of $3,560 in his said supplemental account, the said orphans' court had no jurisdiction over the subject-matter of said claim, and the allowance thereof was and is null and void. They also aver that said George Oyster's claim, on account of the failure of the title to said quarter section of land, being adverse and antagonistic to his duty as executor of said will, he could not legally settle said claim with himself; that said claim is illegal and unjust to both the plaintiffs and defendants Margaret and Margaretta, and he is not entitled to said credit or to anything at all on account of said failure of title; that said George Oyster in said supplemental account improperly and illegally took a credit of $7,030 for the amount paid to Margaret Oyster on account of her legacy of $10,000 under said will, and he also improperly and illegally took a credit of the balance in his hands, to wit, the sum of $6,365.75, on account of his legacy of $10,000 under said will, both of which credits were contrary to and in violation of said contract of March the 3rd, 1868, and said mutual agreement of November the 15th, 1869, and also in violation
30 of his duty as executor as aforesaid under said ancillary administration.

Plaintiffs aver that the taking of such credits was altogether an *ex parte* proceeding; that neither plaintiffs nor said Margaretta Oyster, executrix as aforesaid, had any notice or were present in said orphans' court when said George Oyster took said credits; that they are advised and believe that it was the duty of George Oyster,

as executor as aforesaid, to have brought the balance remaining in his hands, to wit, the sum of $16,955.75, and the interest thereon to the probate court of Lewis county, Missouri, and have it put in with the assets in the hands of David K. Oyster, as administrator as aforesaid, and then have obtained an order of distribution of the whole estate according to said contract of March the 3rd, 1868, modifying said will as aforesaid, and said mutual agreement of November the 15th, 1869, as hereinbefore stated; and said George Oyster ever since obtaining said deed from said Simon K. Oyster as aforesaid gives out and pretends that he took and holds the legal title to said lands for the use and benefit of himself, Margaret Oyster, Margaretta Oyster, as executrix of Simon Oyster, deceased, and David K. Oyster, as legatees under the will of Abraham Oyster, deceased, with the right to sell said real estate and receive and hold the purchase-money therefor as assets in his hands as executor of said will in the State of Pennsylvania and, after paying himself for executing said assumed trust, to distribute the remainder in the manner and proportions as directed by said will, and he repudiates and entirely denies the rights of the children of David K. Oyster under said contract of March 3rd, 1868, modifying the will of Abraham Oyster, deceased, as aforesaid, and said mutual agreement of November 15th, in 1869,

31 and he gives out and pretends that he took the title to said lands clear of any trust therein in favor of said children of David K. Oyster, whereas the plaintiffs charge the contrary to such pretenses to be true, and that said George Oyster took said deed from Simon K. Oyster and wife to said lands clothed with the trust in favor of said children, as hereinbefore stated, and with full knowledge of all the facts creating said trust, as herein alleged, and that he holds the same subject to the equitable rights of the plaintiffs, as hereinbefore stated.

In consideration whereof and because the plaintiffs are entirely remediless in the premises, according to the strict rules of the common law, and can only have relief in a court of equity, where matters of this sort are properly cognizable and relievable—

To the end, therefore, that the said George Oyster and Simon K. Oyster may, if they can, show why your oratrix and orators should not have the relief hereby prayed, and may, upon their several and respective corporal oaths and according to the best and utmost of their several and respective knowledge, remembrance, information, and belief, full, true, direct, and perfect answer make to each and all of the allegations contained in the foregoing bill; that in the meantime the defendant George be enjoined and restrained from issuing an execution on said judgment which he recovered against the plaintiff, David K. Oyster, on the 6th day of April, 1885, for the possession of the premises therein described, to wit, the east half of the northeast quarter and the north half of the southeast quarter of section No. 1, township No. 60 north, range 6 west, situate in Lewis county,

Missouri, and from taking possession of said premises until
32 the plaintiffs shall have obtained a hearing of this case; that upon the said hearing the credit of $3,560 which said George Oyster obtained in his supplemental account filed in the orphans'

court of Cumberland county, Pennsylvania, on account of the failure of the title to the northeast quarter of section No. 7, township No. 3 north, range 2 east, situate in Fulton county, Illinois, which had been conveyed by said Abraham Oyster to said George by deed dated December the 9th, 1859, be declared null and void and the same stricken from said account; that an account may be taken by and under the direction of this honorable court of said ancillary administration of said George Oyster and of the rents received by him from the real estate from which he ejected David K. Oyster as aforesaid, and that he may be required to pay interest upon the balance found due said estate in his hands; that an account, based upon said judgment of the circuit court of said Lewis county, Missouri, rendered on the 3rd day of April, 1880, ascertaining and fixing the amount of personalty and fixing the amount of money from the sale of realty in the hands of the plaintiff, David K. Oyster, as administrator as aforesaid, be likewise taken by and under the direction of this honorable court, and if anything be found due said estate in his hands as such administrator that he may be charged interest thereon; that he may recover the said sum of $2,000 for which said George Oyster sold said quarter section of land to said James M. Petty as aforesaid, and the interest thereon from the 3rd day of December, 1869, and that he also recover the value of the southwest quarter of section No. 12, township No. 4, range No. 7 west, in Pike county, Illinois, which the defendants, George, Mar-
33 garet, and Margaretta Oyster, executrix as aforesaid, agree, on the 3rd day of March, 1868, to convey to plaintiff, David K. Oyster, as aforesaid, in order to make the share of David K. Oyster and his children equal to the respective shares of said George, Margaret, and Margaretta Oyster, executrix as aforesaid, in said estate; that said George Oyster be declared to hold the lands conveyed by said deed dated February the 10th, 1881, from Simon K. Oyster and wife to him in trust for the use and benefit of Mollie N. Oyster, William E. Oyster, and Iola E. Oyster, subject, however, to a lien thereon for such balance, if any, as may be found due said estate in the hands of David K. Oyster, as administrator as aforesaid, and also the amount found due said estate in the hands of George Oyster, as executor as aforesaid, and upon the payment of such balance, if any shall be found due, that said George Oyster be ordered and decreed to convey to said children of David K. Oyster all the right, title, interest, and claim which said George Oyster acquired from said Simon K. Oyster under and by virtue of said deed made by said Simon K. Oyster and wife on the 10th day of February, 1881, to said George Oyster as aforesaid; that after the amount due from David K. Oyster to the estate of Abraham Oyster, deceased, if any, and also the amount due from George Oyster to the same shall have been ascertained and fixed that the amount so found be distributed among the said children of David K. Oyster and the defendants, George Oyster, Margaret Oyster, and Margaretta Oyster, executrix as aforesaid, according to said contract of March 3rd, 1868, modifying the will of Abraham Oyster, deceased, as aforesaid, and said mutual agreement of November the 13th, 1869, and that your oratrix

and orators may have such other and further relief in the
34 premises as the nature of the case may require and may be agreeable to equity and good conscience. Complainants state that the reason why Iola E. Oyster is not made a co-plaintiff in this bill is that the said Iola E. Oyster is the wife of Simon K. Oyster, one of the defendants herein, and that she is under the influence and control of her said husband, and he refuses to join as a co-plaintiff with her in this suit, and hence she is made a defendant.

A duly certified copy of the account of George Oyster, executor of the last will and testament of Abraham Oyster, deceased, as filed in the orphans' court of Cumberland county, Pennsylvania, marked Exhibit K², J. F. Allen, special examiner, is herewith filed; also a duly certified copy of the second and supplemental account of George Oyster, executor as aforesaid, marked Exhibit I², J. F. Allen, special examiner, is herewith filed, and also a duly certified copy of the judgment of the circuit court of Lewis county, Missouri, ascertaining and fixing the indebtedness of David K. Oyster, as administrator as aforesaid, to the estate of Abraham Oyster, deceased, as hereinbefore stated, is herewith filed, marked Exhibit P P, and each one of said exhibits is hereby prayed to be taken as part of this bill. May it please your honors to grant unto your oratrix and orators a writ of subpœna to be directed to the said George Oyster, Margaret Oyster, Margaretta Oyster, executrix of the last will and testament of Simon Oyster, deceased; Simon K. Oyster, and Iola E. Oyster, his wife, all citizens of the State of Pennsylvania, thereby commanding them and each of them, at a certain time and under a certain penalty therein to be limited, personally to appear before this honorable court and then and there full, true, direct, and perfect answer make to all and singular the premises, and, further, to stand to, perform, and abide such further order, direction,
35 and decree therein as this honorable court shall deem most meet.

JAMES CARR,
Solicitor for Complainants.

JAMES CARR, *Of Counsel.*

UNITED STATES OF AMERICA, }
Eastern District of Missouri, } *ss:*

David K. Oyster makes oath and says that he has heard read the foregoing bill, and on behalf of himself and the other complainants therein named states that the facts therein stated are true of his own knowledge except as to the matters which are therein stated to be information and belief, and as to those matters he believes them to be true as stated.

DAVID K. OYSTER.

Subscribed and sworn to before me this 13th day of April, 1885.
A. P. SELBY, *Clerk.*

36 And afterwards, to wit, on the first day of March, A. D. 1886, an appearance of defendants was filed in said cause in words and figures following to wit:

In the United States Circuit Court for the Eastern District of Missouri.

MOLLIE N. OYSTER, WM. E. OYSTER, and DAVID K. OYSTER, Plaintiffs,
vs.
GEORGE OYSTER, MARGARET OYSTER, Margaretta Oyster, Ex'x of the Estate of Simon Oyster, Dec'd; Simon K. Oyster, and Iola E. Oyster, Defendants. } In Equity. Case No. 2512.

The above-named defendants hereby severally enter their appearance in this cause.
March rules, 1886.

DRYDEN AND DRYDEN,
Solicitors for said Defendants.

And afterwards, to wit, on the 24th day of March, A. D. 1886, there was filed in said cause the demurrer of George Oyster to part of the bill in words and figures following, to wit:

In the United States Circuit Court for the Eastern District of Missouri.

37 MOLLIE N. OYSTER *et al.*, Plaintiffs,
vs.
GEORGE OYSTER *et al.*, Defendants. } In Equity. No. 2512.

The demurrer of George Oyster, defendant, to part of the bill of complaint of Mollie N. Oyster, William E. Oyster, and David K. Oyster, plaintiffs.

This defendant, by protestation, not confessing all or any of the matters and things in the plaintiffs' bill of complaint contained to be true in such manner and form as the same is therein set forth and alleged, to so much and such part of said bill as asks this court to review and disturb the judgments and decrees of the orphans' court of Cumberland county, Pennsylvania, touching the administration of the estate of the testator, Abraham Oyster, in the State of Pennsylvania, and the settlement of the accounts of this defendant as executor of the will of said testator with said orphans' court, and to so much of said bill as prays this court to decree the credit of 3,500 dollars allowed to this defendant by said orphans' court in his said supplemental settlement of 1873 null and void, and that the same be stricken from said account, and to so much of said bill as prays that an account may be taken under the direction of this honorable court of the said ancillary administration of this defendant, and to so much of the said bill as prays further or other relief with respect or in relation to said judgments and decrees of said orphans' court or said credit allowed or said ancillary administration, this defendant doth demur, and for cause of demurrer showeth

that the said plaintiffs have not made or stated such a case as entitles them in a court of equity to the relief so prayed for or
38 any part thereof; wherefore, and for divers other good causes of demurrer appearing in the said bill, this defendant doth demur thereto, and humbly demands the judgment of this court whether he shall be compelled to make any other or further answer to the said part hereinbefore mentioned of said bill, and prays to be hence dismissed with his costs and charges in this behalf most wrongfully sustained.

GEORGE OYSTER, *Defendant*,
By DRYDEN AND DRYDEN,
His Solicitors.

I hereby certify that I am solicitor and of counsel for the defendant in the above-entitled cause, and that in my opinion the foregoing demurrer of George Oyster, defendant, to the bill of complaint of Mollie N. Oyster and others, complainants, is well founded in point of law and proper to be filed in the above cause.

JOHN D. S. DRYDEN,
Solicitor and of Counsel for Defendant.

UNITED STATES OF AMERICA, }
Eastern District of Pennsylvania, } *ss.*:

George Oyster, the defendant, being duly sworn, deposes and says that the foregoing demurrer is not interposed to delay the cause or any proceedings therein.

GEORGE OYSTER.

Affirmed and subscribed to before me this 19th day of March, 1886.

[SEAL.] LEROY J. WOLFE,
United States Commissioner.

And on said last-mentioned day there was also filed in said
39 cause the plea of George Oyster in words and figures following, to wit:

In the United States Circuit Court for the Eastern District of Missouri.

MOLLIE N. OYSTER *et al.*, Plaintiffs, }
vs. } No. 2512. In Equity.
GEORGE OYSTER *et al.*, Defendants. }

The plea of George Oyster, one of the defendants, to the bill of complaint of Mollie N. Oyster, William E. Oyster, and David K. Oyster, plaintiffs.

This defendant, by protestation, not confessing or acknowledging the matters and things in and by said bill set forth and alleged to be true in such manner and form as the same are thereby and therein set forth and alleged, as to so much and such part of said bill as seeks

to charge the lands in said bill described with a trust in favor of the plaintiffs, Mollie N. and William E., and the defendant, Iola E., children of the plaintiff, David K., and to hold this defendant trustee of said lands for said children, and to compel this defendant to convey to the said children all the right, title, interest, and claim in said lands which this defendant acquired from Simon K. Oyster under and by virtue of the said deed of the 10th of February, 1881, mentioned in said bill, from said Simon K. to this defendant, and to hold this defendant to account for the rents and profits of such of said lands
40 as are charged in said bill to have been taken possession of by this defendant and as seeks to enjoin and restrain this defendant from taking possession of certain other parcels of land described in said bill under a certain unexecuted judgment in ejectment in said bill set forth, this defendant doth plead thereto, and for plea saith that heretofore, to wit, on the 6th day of September, 1883, the present plaintiffs exhibited their bill of complaint in this honorable court against defendant and his codefendants, Margaret Oyster, Margaretta Oyster, executrix of Simon Oyster, deceased; Simon K. Oyster, and Iola E. Oyster and one John Albright, the then husband of the plaintiff, Mollie N., thereby stating that one Abraham Oyster, late of Lewis county, in this State, had theretofore died seized, among other property, of the lands in that bill described, being the same lands in the present bill described, leaving the last will and testament which is set forth in *hæc verba* in that bill and is of the form and tenor of that set forth in the present bill; and stating also that the said will had been duly probated and admitted to record in the county court of said county of Lewis, and that administration, with the will annexed, of the estate of the testator in this State had been duly granted to the plaintiff, David K. Oyster, by said county court; and stating also that on the 3rd day of March, 1868, an agreement in writing had been entered into by Margaret Oyster, George Oyster (this defendant), and Margaretta Oyster, executrix of the last will and testament of Simon Oyster, deceased, and David K. Oyster (one of the plaintiffs) modifying said will of Abraham Oyster, which said supposed writing is set forth in *hæc verba*, and is of the form and tenor of that set forth in the present bill; and stating, further, that the said administrator,
41 with the will annexed, made a sale of the lands of the testator under the provisions of said will at auction on the 15th day of November, 1869, at Monticello, in said county of Lewis, and that at that sale the defendant, Simon K. Oyster, purchased the lands in that bill described, being the same as those described in the present bill, in his name, but in trust for the children of David K. Oyster, alleged in that bill, as in the present, to be the plaintiffs, Mollie N. and William E., and the defendant, Iola E., and that he, the said Simon K., afterwards accepted a deed, absolute in form, made by the said David K., as such administrator, on the 6th day of June, 1870, for the conveyance of the lands so purchased by him to the said Simon K., but with the understanding that he was to hold the lands thereby conveyed as trustee and for the use and

benefit of the said children of the said David K.; and stating and charging also that a certain deed, bearing date the 10th day of February, 1881, made by the said Simon K. and his wife, Iola E., to this defendant for the conveyance to this defendant of the same lands conveyed to said Simon K. by said deed to him from said administrator was procured by this defendant by improper and fraudulent practices, and that it vested in this defendant the legal title only in and to the lands conveyed by it charged with the alleged trust in favor of said children of said David K., and that it constituted this defendant a trustee in his own wrong of said lands for the use and benefit of said children; and thereby further stating that this defendant had then lately recovered a judgment in ejectment in this honorable court against the said David K. for the possession of divers of the said lands and was threatening to take, but had not taken, possession thereof; and praying that this defendant might be enjoined from taking execution
42 of said judgment in ejectment and from recovering or taking possession of the lands so recovered under said judgment in ejectment; and praying, further, that this defendant might be decreed to convey to the plaintiffs, Mollie N. and William E., and the defendant, Iola E., all the right, title, and interest, claim, and demand which this defendant acquired from said Simon K. Oyster under and by virtue of the said deed made by said Simon K., of the 10th of February, 1881, and for general relief; to which said bill this defendant and his codefendants, Margaret, Magaretta, executrix of Simon K., and Iola E., appeared and pleaded; and this defendant and the defendant Simon K. respectively put in their answers to said former bill, by which they severally denied and disputed the said pretended trusts so as aforesaid set up in said former bill and denied the fraud so as aforesaid alleged in said former bill, and in and by their said answers they alleged and charged that the said David K., as administrator of the said Abraham, was in arrears in divers large sums of money to his co-legatees in respect of the estate in his hands as such administrator, and that he and his sureties on his official bond were utterly insolvent and that the lands in dispute were chargeable with and were subject to the payment of the said arrearages, and that the said deed of the 10th of February, 1881, from said Simon K. to this defendant conveyed the lands therein described, being the lands in dispute, to this defendant expressly in trust to take possession, sell, and convey the same, and out of the proceeds thereof to pay and satisfy said arrearages of the said David K; and the plaintiffs replied to the said answers, and witnesses were examined on both sides, and their depositions duly published, and the said cause afterwards and on or about the
43 first day of December, 1884, came on to be heard and was then and there heard, and a decree was then and there pronounced therein by this honorable court, whereby the said former bill of the plaintiffs was dismissed with costs without prejudice to any rights the plaintiffs might have in the final administration of the said trust devolved on George Oyster (this defendant) by the said deed from Simon K. Oyster, dated Feb'y 10th, 1881, and the

contract of March 3rd, 1868, executed by George Oyster, D. K. Oyster, Charles Oyster, and Margaret Oyster, and whereby the right of the plaintiffs to sue for or recover from this defendant the said lands conveyed to him by said deed of 10th February, 1881, or to institute or maintain this or any suit for the recovery of the same was and is forever barred and concluded; which said decree was afterwards, on or about the said 1st day of December, 1884, duly signed and enrolled, and the same is still in full force, in nowise *un*altered, vacated, or reversed; all which in and by said decree and the record and proceedings in said cause remaining in this court, reference being thereto had when produced, will more fully and at large appear; and so this defendant says that it is not true, as the plaintiffs in and by their said present bill have alleged, that this honorable court at the hearing of the said former bill declined to pass any decree on the merits, and that the dismissal of said bill was without prejudice to any rights which the plaintiffs had under said will and under said contract of March 3rd. 1868, but the contrary thereof is true; all of which matters and things this defendant doth aver and plead in bar to so much of the plaintiffs' bill as hereinbefore particularly mentioned, and prays judgment of this honorable court whether he should make any further answer to so much of
44 the said bill as is hereinbefore pleaded to, and prays to be hence dismissed with his costs and charges most wrongfully sustained.

DRYDEN AND DRYDEN,
Solicitors for Def't, Geo. Oyster.

I hereby certify that I am solicitor and of counsel for the defendant, Geo. Oyster, in the foregoing cause, and that in my opinion the foregoing plea is well founded in point of law.

JOHN D. S. DRYDEN,
Solicitor and of Counsel for Defendant.

UNITED STATES OF AMERICA,
Eastern District of Pennsylvania, } ss:

George Oyster, being duly affirmed, deposes and says that he is the defendant named in the foregoing plea; that he has read the same and knows the contents thereof, and that the same is true of his own knowledge.

GEORGE OYSTER.

Affirmed and subscribed to before me this 19th day of March, A. D. 1886.

LE ROY J. WOLFE, [SEAL.]
United States Commissioner.

And afterwards, to wit, on the 14th day of October, 1886, the following further proceedings were had and appear of record in said cause in words and figures following, to wit:

45 MOLLIE N. OYSTER *et al.*, Complainants,
vs.
GEORGE OYSTER *et al.*, Defendants.

The demurrer of complainants to defendants' plea in bar came on to be heard and was submitted and by the court taken under advisement.

And afterwards, to wit, on the 16th day of October, 1886, the following further proceedings were had and appear of record in said cause in words and figures following, to wit:

MOLLIE N. OYSTER *et al.*, Complainants,
vs.
GEORGE OYSTER *et al.*, Defendants.

The complainants' demurrer to defendants' plea in bar having been argued and submitted, and the court having fully considered the same, it is ordered that said demurrer be, and it is, overruled.

And afterwards, on the 18th day of October, 1886, the following further proceedings were had and appear of record in said cause, to wit:

MOLLIE N. OYSTER *et al.*, Complainants,
vs.
GEORGE OYSTER *et al.*, Defendants.

Now come the complainants, by their solicitor, and move the court to set down the demurrer to the bill for hearing, and after-
46 wards, by their solicitors, move the court to dismiss for want of reply.

And thereupon it is ordered that said motions be set down for hearing for October 19th.

Said motion to dismiss bill for want of replication is in words and figures following, to wit:

In the United States Circuit Court for the Eastern District of Missouri. September Term, 1886.

MOLLIE N. OYSTER *et al.*
vs.
GEORGE OYSTER *et al.*
In Equity. No. 2512.

The plea of the defendant, George Oyster, having at a former day in this term been adjudged by the court sufficient, and the plaintiffs having hitherto wholly failed to reply to said plea, whereby the truth stands admitted, the defendants, by their solicitors, come now and move the court to dismiss the plaintiffs' bill herein for want of replication thereto.

DRYDEN AND DRYDEN,
Solicitors for Defendants.

And afterwards, to wit, on the 19th day of October, 1886, the following further proceedings were had and appear of record in said cause, to wit:

MOLLIE N. OYSTER *et al.*, Complainants,
vs.
47 GEORGE OYSTER *et al.*, Defendants.

Now come the parties, by their respective solicitors, and the demurrer of defendants to the bill of complaint herein came on to be heard and was argued by counsel and submitted.

And afterwards, to wit, on the 21st day of October, 1886, the following further proceedings were had and appear of record in said cause, to wit:

MOLLIE N. OYSTER *et al.*, Complainants,
vs.
GEORGE OYSTER *et al.*, Defendants.

The demurrer of defendants to complainants' bill of complaint herein having heretofore been argued and submitted, and the court now being fully advised thereof finds the law thereon for the defendants.

It is therefore ordered, adjudged, and decreed that said demurrer be, and it is, sustained, and that the bill of complaint herein be dismissed with costs to the defendants, to be taxed.

And afterwards, to wit, on the 25th day of April, 1887, the following further proceedings were had and appear of record in said cause, to wit:

MOLLIE OYSTER *et al.*, Complainants,
vs.
GEORGE OYSTER *et al.*, Defendants.

48 Now come the complainants, by their solicitor, and on his motion an appeal is allowed to the Supreme Court of the United States on giving bond in the sum of one hundred and fifty dollars.

And afterwards, to wit, on the 18th day of May, 1887, the following further proceedings were had and appear of record in said cause, to wit:

MOLLIE N. OYSTER *et al.*, Complainants,
vs.
GEORGE OYSTER *et al.*, Defendants.

Now come the complainants, by their solicitor, and present their appeal bond in the sum of one hundred and fifty dollars, which is approved by the court and ordered to be filed as a part of the record in this cause.

And thereupon it is ordered that the clerk of this court make out

and certify to the Supreme Court of the United States a transcript of the record and proceedings in this cause.

Said appeal bond is in words and figures following, to wit:

Know all men by these presents that we, Mollie N. Oyster, William E. Oyster, David K. Oyster, as principals, Jas. L. Grubbs, as surety, are held and firmly bound unto George Oyster, Margaret Oyster, Margaretta Oyster, executrix of Simon Oyster, deceased; Simon K. Oyster, and Iola C. Oyster, his wife, in the full and just sum of one hundred and fifty dollars, to be paid to the said George Oyster,
49 Margaret Oyster, Margaretta Oyster, executrix of Simon Oyster, deceased; Simon K. Oyster, and Iola C. Oyster, his wife, their heirs, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this 12th day of May, in the year of our Lord one thousand eight hundred and eighty-seven.

Whereas lately, at the September term, A. D. 1886, of the circuit court of the United States for the eastern division of the eastern judicial district of Missouri, in a suit depending in said court between Mollie N. Oyster, William E. Oyster, and David K. Oyster, plaintiffs, and George Oyster and others, as above named, defendants, a decree was rendered against the said plaintiffs, Mollie N. Oyster, William E. Oyster, and David K. Oyster, and the said plaintiffs having obtained an appeal of the said court to reverse the decree in the aforesaid suit, and a citation directed to the said defendants, George Oyster, Margaret Oyster, Margaretta Oyster, executrix; Simon K. Oyster, and Iola C. Oyster, citing and admonishing them to be and appear in a Supreme Court of the United States to be holden at Washington the second Monday of October next: Now, the condition of the above obligation is such that — the said Mollie N. Oyster, William E. Oyster, and David K. Oyster shall prosecute said appeal to effect and answer all damages and costs if they fail to make good their plea, then the above obligation to be void; else to remain in full force and virtue.

Sealed and delivered in presence of—

MOLLIE N. OYSTER. [SEAL.]
WILLIAM E. OYSTER. [SEAL.]
DAVID K. OYSTER. [SEAL.]
JAS. L. GRUBB. [SEAL.]

Approved by—

AMOS M. THAYER,
United States District Judge.

50 In the Circuit Court of the United States for the Eastern District of Missouri.

MOLLIE N. OYSTER *et al.*
vs.
GEORGE OYSTER *et al.*
} No. 2512.

Opinion of the Court, October 16th, 1886.

BREWER, *J.:*

In this case a bill in equity was filed some years ago seeking, in behalf of the children of David Oyster, to enforce a parol trust created at the time of an administrator's sale and also to enjoin certain judgments in ejectment. That case went to hearing and a decree was entered dismissing the bill, but containing a reservation of this kind:

"Without prejudice to the rights of any parties to enforce a trust created by a subsequent deed from Simon K. Oyster to George Oyster, one of the defendants, and also without prejudice to any of the rights created by a will of the ancestor of these parties."

Now, a new bill has been filed by the same complainants containing the same allegations and others, but seeking to enforce that same parol trust, and counsel for complainants insist that the decree heretofore rendered was not a decree upon the merits, but left the whole matter open for inquiry. We have no question but that the language of the decree expresses just what was the intention of the court at that time—a determination of the merits of that inquiry—and that the question as to whether there was or was not a parol trust was settled by that decree adversely to the complainants.

To this bill, or at least so much thereof as asks for an enforcement of the parol trust, the defendants have filed a plea
51 in bar, setting up that former adjudication. An inquiry arises whether the plea should not have been broader and run to the whole bill. It is possible it should have been, because the whole cast of this bill is for the purpose of enforcing that parol trust and rights springing therefrom, and that has been adjudicated against the complainants.

There is no doubt that it was so adjudicated. The demurrer to the plea will therefore be overruled, because there has been a former adjudication, so intended and so expressed in the language of the decree as to be beyond any possibility of misconception.

TREAT, *J.:* I would remark to counsel that the plea seems to be in one sense a plea *pro tanto.* It might have been a plea in entirety.

Mr. DRYDEN: I intended to make it a plea to all of the principal relief sought.

TREAT, *J.:* The only question, then, as Brother Brewer says, is on the demurrer.

BREWER, *J.:* The entry will be demurrer to the plea overruled.

MEMORANDUM BY THE CLERK.—No demurrer was ever filed to defendants' plea, but at the argument on the plea it was treated as though a demurrer had been filed thereto.

52 UNITED STATES OF AMERICA,
Eastern Division of the Eastern
Judicial District of Missouri, } *ss:*

I, A. P. Selby, clerk of the circuit court of the United States in and for the eastern division of the eastern judicial district of Missouri, do hereby certify the writing hereto attached to be a true transcript of the record, pleadings, and proceedings in case No. 2512, of Mollie N. Oyster *et al.*, complainants, against George Oyster *et al.*, defendants, as fully as the same remain on file and of record in said case in my office.

Seal of the United States Circuit Court, Eastern Division of the Eastern Judicial District of Missouri.

In witness whereof I hereunto subscribe my name and affix the seal of said court, at office, in the city of St. Louis, in the eastern division of said district, this 19th day of September, in the year of our Lord eighteen hundred and eighty-seven.

A. P. SELBY,
Clerk of said Court,
By —— ——, *Deputy.*

[Endorsed:] No. 2512. United States circuit court, eastern division of the eastern judicial district of Missouri. Mollie N. Oyster *et al.* against George Oyster *et al.* Duly certified transcript of the record in the above-entitled cause.

[Endorsed:] No. 2512. United States circuit court, eastern division of the eastern judicial district of Missouri. Mollie N. Oyster *et al.* against George Oyster *et al.* Duly certified transcript in the above-entitled cause.

Endorsed on cover: E. Missouri C. C. U. S. No. 134. Mollie N. Oyster, William E. Oyster, and David K. Oyster, appellants, *vs.* George Oyster, Margaret Oyster, Margaretta Oyster, executrix of Simon Oyster, deceased; George Oyster, adm'r of Simon K. Oyster, deceased, and Iola E. Oyster. Filed October 3, 1887.

Office Supreme Court U. S.
FILED.
NOV 26 1890
JAMES H. McKENNEY,
CLERK

SUPREME COURT OF THE UNITED STATES,

OCTOBER TERM, 1890.

MOLLIE N. OYSTER, WM. E. OYSTER AND DAVID K. OYSTER, APPELLANTS,

vs.

GEORGE OYSTER, MARGARET OYSTER, MARGARETTA OYSTER, EXECUTRIX, GEORGE OYSTER, ADMINISTRATOR, AND IOLA E. OYSTER, RESPONDENTS.

APPEAL FROM CIRCUIT COURT OF UNITED STATES, EASTERN DISTRICT OF MISSOURI.

JAMES H. ANDERSON, Solicitor for Appellants.
D. P. DYER, Solicitor for Respondents.

APPELLANTS STATEMENT, ASSIGNMENT OF ERRORS, BRIEF AND ARGUMENT.

SUPREME COURT OF THE UNITED STATES,

OCTOBER TERM, 1890.

MOLLIE N. OYSTER, WM. E. OYSTER AND DAVID K. OYSTER, APPELLANTS,

vs.

GEORGE OYSTER, MARGARET OYSTER, MARGARETTA OYSTER, EXECUTRIX, GEORGE OYSTER, ADMINISTRATOR, AND IOLA E. OYSTER, RESPONDENTS.

APPEAL FROM CIRCUIT COURT OF UNITED STATES, EASTERN DISTRICT OF MISSOURI.

JAMES H. ANDERSON, Solicitor for Appellants.

D. P. DYER, Solicitor for Respondents.

INDEX TO STATEMENT, ASSIGNMENT OF ERRORS, BRIEF, ETC.

	PAGE
Complainants' bill	1
Demurrer of defendant, George Oyster, to bill	9
Plea of defendant, George Oyster, to bill	10
Action of court on defendants' plea	11
Action of court on defendants' demurrer	11
Assignment of errors by appellants	11
Brief of appellants	13
Argument of appellants	14

APPELLANTS STATEMENT, ASSIGNMENT OF ERRORS, BRIEF AND ARGUMENT.

This is a suit in equity, brought in Circuit Court, April 15, 1885, on which day complainants filed their bill. To this bill respondents filed a plea to part of the bill, which plea was demurred to by complainants, and demurrer was overruled, respondents demurred to parts of the bill, the demurrer was sustained to the bill, and the bill was therefore dismissed with costs. Complainants appeal.

The bill so filed by complainants recites that complainants, citizens of Missouri bring this their bill against respondents, all citizens of Pennsylvania.

That Abraham Oyster, late of Lewis County, Missouri, died August 10, 1862, owning a large amount of real and personal property, first having made a will August 8, 1862, which was probated in Lewis County, Missouri, by which he made devises as follows:

WILL OF ABRAHAM OYSTER.

It is my will that all my real estate, part of which is situated in Cumberland County, Pennsylvania, part in Pike County, Illinois, and part in Lewis and Marion County, Missouri, (Island 14, in Mississippi River, opposite LaGrange, is not inculded herein,) be taken possession of as soon as may be by the executors of this will, and that all such parts thereof as can be leased or rented until such time as in the judgment of said executors it will sell for fair prices, when they will proceed to sell said real estate to the best advantage, all of which they are hereby authorized to bargain, sell and alieu, in fee simple and out of the proceeds of such sales and rents.

1. I hereby give and bequeath to my daughter, Margaret Oyster, ten thousand dollars.

2. I give and bequeath to my son, George Oyster, ten thousand dollars.

3. Of the remainder of the proceeds of sales and rents aforesaid, I give and bequeath to my sons, Simon Oyster, George Oyster and David Oyster, and my daughter, Margaret Oyster, each an equal portion, but it is my will that the portion that falls to my son, David K. Oyster, my executors shall so dispose of that only the interest annually shall be paid to him. Also that saw mills in the City of LaGrange, shall, until such time as my executors shall deem it proper to sell it, as the other real estate, shall be rented to my son, David K. Oyster at a fair sum, or to some other person. Also that my executors collect all the debts owing to me and out of such collections pay all expenses of the executorship, including all fees.

I do hereby appoint as executors of this will my son, George Oyster, and my son-in-law, Charles Oyster, both of Cumberland County, Pennsylvania.

That George Oyster and Charles Oyster, by reason of citizenship were disqualified from acting as executors in Missouri, and on the same day the will was probated David K. Oyster was appointed administrator with will annexed in Missouri, by the County Court of Lewis County, Missouri.

That at the date of his death Abraham Oyster left four children, Margaret Oyster, George Oyster, David K. Oyster and Simon Oyster.

That in 1859, Abraham Oyster gave $5,000 cash to each George Oyster, Margaret Oyster and Simon Oyster, and conveyed to each of them a section of land in Lewis County, Missouri, and a half section of land in Pike County, Illinois. That there was no money consideration passed from said grantees to Abraham Oyster, that the only consideration was natural love and affection which said Abraham Oyster bore to his said children, and the consideration expressed in said deeds, $9,000 to each, indicated merely the amount of his estate they were to be charged. That Abraham Oyster did not at same time give any money or convey any land to David K. Oyster, and said Abraham Oyster prior to making his said will had often expressed his intention to so make his will that David K. Oyster should have equal share with the other children and that said David K. Oyster was to have the use and income therefrom during his life. That when he made his will he forgot this and Simon Oyster did not get in the will an equal share with George and Margaret.

Said Simon Oyster and David K. Oyster were not satisfied with the will, and Simon Oyster on April 18, 1866, instituted suit in Lewis County, Missouri, to have said will set aside. While the suit was pending Simon Oyster died, leaving a will appointing his wife, Margaretta Oyster executrix, with full power to dispose of and settle up his estate. The will was duly probated in the Orphans Court in Dauphin County, Pennsylvania, and said Margaretta took on herself said trust.

On March 3, 1868, the heirs and legatees of Abraham Oyster, deceased, towit: Margaret Oyster, George Oyster, Margaretta Oyster and David K. Oyster entered into an agreement modifying said will and settling the dispute as to said will which agreements as follows, towit:

AGREEMENT OF MARCH 3, 1868.

Agreed this 3d day of March, A. D. 1868, between Charles Oyster and Margaret, his wife, George Oyster, David K. Oyster and Margaretta Oyster, executrix of Simon Oyster, deceased, heirs of Abraham Oyster, deceased. That said Abraham Oyster did execute his last will and testament August 8, 1862, filed for record in Lewis County, Mo., October 21, 1862, and bequeathed to Margaret Oyster, wife of Charles Oyster, $10,000, and to George Oyster $10,000, which said bequest proved unsatifactory to Simon Oyster and David K.

Oyster and that Simon Oyster made objections to the validity of said will of Abraham Oyster, shown by the records of Lewis County, Mo., which suit was pending at the time of Simon Oyster's decease. Now for the purpose of a speedy settlement of the estate and for many other good considerations we, the subscribing parties, have this day agreed that Margaretta Oyster, executrix of the estate of Simon Oyster, deceased, and David K. Oyster shall pay unto Margaret Oyster, wife of Charles Oyster, and to George Oyster the just sum of $5,000 in equal parts of $2,500 to each and in consideration of Simon Oyster, deceased; during his lifetime, George Oyster and Margaret Oyster, wife of Charles Oyster, having received form our father, Abraham Oyster, advancements in property in East Pennsborough, Penn., of $5,000 cash and 640 acres of land in Lewis County, Mo.; also 320 acres of land in Illinois. That David K. Oyster did not receive an equivalent. Therefore it is agreed that we, Margaret, wife of Charles Oyster, George Oyster, and Margaretta Oyster, executrix of Simon Oyster, deceased, do agree to make or cause to be made title to David K. Oyster for all the right, title, interest and claim accruing to the estate of Simon Oyster, deceased, or to George Oyster and Margaret, wife of Charles Oyster, the following property of the estate of Abraham Oyster, deceased, viz: 640 acres of unimproved land in Lewis County, Mo.; also northwest one-quarter section 7, township 5, range 3 west, containing 160 acres; also southwest one-quarter section 12, township 4, range 7 west, containing 160 acres in Pike County, Ill.; also lot of ground beginning at south end of Lafayette Street, in LaGrange, Lewis County, Mo., running three chains, eighty-eight links north along said street to a stake, thence east to a stake at the corner of said Oyster mill lot, thence south eleven and one-half degrees, three chains, eighty-eight links, to a stake, thence west to place of beginning; also one acre of land adjoining above, by reference to deed from C. F. Marlew, to Abraham Oyster, will in full appear; also lot number 3, and west lot number 4, of block 5, Waltham & Louther's Addition to LaGrange, said lots and lands being the same in which is built steam saw mills in town of LaGrange, Mo., upon payment of $1,125 by said David K. Oyster to estate of Abraham Oyster, deceased; also that David K. Oyster receive $5,000 of said estate, and that in consideration of the foregoing propositions being fully complied with by the contracting parties, that all the balance of the estate of Abraham Oyster, deceased, be equally divided to Margaret Oyster, wife of Charles Oyster, George Oyster, the heirs of Simon Oyster, deceased, and David K. Oyster, in equal parts, and that the said will of Abraham Oyster be fully executed except the devices to Margaret and George Oyster of $10,000 each and so much as relates to the steam saw mills in LaGrange, Mo. It is further agreed in consideration of the premises

that the suit to contest the validity of the will of Abraham Oyster, deceased, be forever abandoned.

In witness whereof, we have hereunto set our hands and seals this day and year above written.

GEORGE OYSTER, [SEAL]
D. K. OYSTER, [SEAL]
M. OYSTER, [SEAL]
CHARLES OYSTER, [SEAL]
MARGARET OYSTER, [SEAL]

That in pursuance of said agreement on April 13, 1868, the suit to set aside the will of Abraham Oyster was dismissed.

Afterward on November 15, 1869, David K. Oyster as administrator of Abraham Oyster with will annexed and in pursuance of said contract of March 3, 1868, and that a day or two before the said date Margaret Oyster, George Oyster, David K. Oyster and Margaretta Oyster agreed that at a sale to be had of the real estate of Abraham Oyster, deceased, David K. Oyster should bid in for the benefit of his children the home farm of Abraham Oyster, deceased, for $12,000, and bid in 640 acres in Oyster prarie; that at said conference it was agreed that said two pieces was to be bid in for the children of David K. Oyster, to make them equal in distribution of said estate with the others heirs, who had received advancements from their father in his lifetime. That in accordance with the said agreement David K. Oyster bid in the property at the sale. When the Clerk of the Circuit Court of the County said that being administrator he could not bid at his own sale. That thereupon it was agreed by all the parties present, Margaret Oyster, George Oyster, Margaretta Oyster and David K. Oyster, that Simon K. Oyster should bid in said home farm and 640 acres in Oyster prairie for the benefit of the children of David K. Oyster, and David K. Oyster then and there relinquished all his right and interest in said property for benefit of his children. Simon K. Oyster consented in consideration that as soon as convenient another trustee should be appointed in his place, which was agreed to. Thereupon the sale proceeded; the home farm was bid in by Simon K. Oyster under said agreement as trustee for benefit of the children of David K. Oyster, for $12,000. The 640 acres was offered and a man named Ammmerman made a bid, when George Oyster told him not to bid that it was being sold only to make title to vest in Simon K. Oyster for benefit of the children of David K. Oyster and divest same out of estate of Abraham Oyster, deceased, that the children of David K. Oyster were entitled to the land under an agreement between the heirs. Thereupon the property was struck off to the said Simon K. Oyster, trustee as for $3,200, for benefit of the children of David K. Oyster.

That it was agreed that the remainder of the property of the es-

tate should be bid in by any one of the heirs without reference to price or location, that it should afterwards be divided into four equal shares, one for each of the four heirs and when divided by appraisers each heir should have one share. Same property was bid in by persons not interested in the estate. After the sale the property was divided into four equal parts by appraisers and one share given each George Oyster, Magaret Oyster, Margaretta Oyster and David K. Oyster's share for benefit of his children. That on June 6, 1870, deeds were made by David K. Oyster to the respective parties, to Simon K. Oyster for the land as trustee for David K. Oyster's children. That the parties went into possession of their lands and have been claiming it under said conveyances ever since.

That on September 11, 1871, the Circuit Court of Lewis County, Mo., appointed Edward P. Robinson, trustee for the children of David K. Oyster, to take the title from Simon K. Oyster, and said trustee demanded Simon K. Oyster should convey to him as trustee said property. That defendant George Oyster fraudulently intending and craftily designing to prevent the transfer of said property to said trustee in accordance with the said agreement, persuaded Simon K. Oyster to decline to convey said property to said trustee, and Simon K. Oyster acting under the influence of George Oyster declined to convey said property to said trustee and since said Robinson departed this life.

That said David K. Oyster on June 6, 1870, in execution of the powers and directions contained in the will or Abraham Oyster, deceased, and the agreement between the heirs and legatees made March 3, 1868, conveyed said lands to Simon K. Oyster as aoresaid by absolute deed, duly acknowledged and recorded in the Recorder's office of Lewis County, Mo., April 4, 1871. Said Simon K Oyster took and received said deed with the distinct understanding and agreement that he was to hold the legal title to said lands for the exclusive use and benefit of the children of David K. Oyster and for no other purpose, he not paying any consideration for said lands nor agreeing to pay any and having no interest therein except to hold the legal title to same as trustee for said children. Said Simon K. Oyster never paid to David K. Oyster the sum mentioned in said deed or any other sum whatever for said deed, and there was no consideration for said deed but such mutual agreement made between the heirs and devisees November 15, 1869, for the purpose of dividing the lands of Abraham Oyster, deceased, as herein before stated and the relinquishment of the interest therein by David K. Oyster to his children.

Said George Oyster, Margaret Oyster and Margaretta Oyster with full knowledge of the said conveyance to Simon K. Oyster for use and benefit of the children of David K. Oyster approved and acquiessed in said conveyance from the time thereof until Febuary 10,

1881. When said Simon K. Oyster, trustee for the children of David K. Oyster, in violation of the trust confided in him made conveyance to George Oyster, conveying the legal title so held by him to said George Oyster, said lands are as follows: West half northwest quarter, southwest quarter, southeast fr. quarter, section 6; north half southeast quarter and east half southwest quarter, section 7; southwest quarter, section 8, all in township 60, range 5; east half northeast quarter, north half southeast quarter, section 1, township 60, range 6; east half southwest quarter, section 36, township 61 range 6; west half southwest quarter, section 2; west half northwest quarter and southwest quarter of southwest quarter of section 3; northeast quarter of southeast quarter section 4; west half southwest quarter of northwest quarter and northeast quarter section 8; west half northeast quarter, section 11; northwest quarter of section 12; northwest quarter, section 20; all in township 60. range 8; southeast quarter, section 31; southwest quarter, section 32, township 60, range 9; also Oyster mill lot in LaGrange, an acre, more or less; lots 3 and 4, block 5, Waltham & Lauther's addition to LaGrange.

That on Febuary 10, 1881, George Oyster craftily to defraud the children of David K. Oyster of their interest in said lands so conveyed to him as trustee as heretobefore shown, prevailed on Simon K. Oyster in violatation of his duty as trustee to convey the legal title to hire said George Oyster for the nominal consideration of five dollars, but which in fact was not paid nor did George Oyster pay any consideration for said conveyance of lands to him, but George Oyster in bad faith with full knowledge of the agreement of March 3, 1868, the mutual agreement between the heirs and devicees of Abraham Oyster, deceased, made November 13, 1869, which resulted in the conveyance to Simon K. Oyster as trustee and with full knowledge of the trust upon which Simon K. Oyster took, aquired and held the legal title to said lands and with full knowledge of the equitable rights of the children of David K. Oyster, said deed from Simon K. Oyster to George K. Oyster has the following expressed therein, viz: "In trust nevertheless that he, the said George Oyster shall and may with reasonable diligence proceed to receive and take possession of said lands and sell the same whomsoever he may in mass or parcels for such price as he may deem advisable, to take the purchase money and make conveyances, and out of purchase money pay expenses of this trust and the residue of purchase money shall be held as assets in his hands as executor in Pennsylvania, of the last will of Abraham Oyster deceased, and be distributed and payable by him as directed by the will in such proportions and share as the legatees would at the time of such comtemplated distribution be entitled."

Plaintiffs aver said trust and considerations were not the trust and conditions which David K. Oyster as administrator conveyed to

Simon K. Oyster the title thereto. Said Simon K. Oyster took the trust upon the conditions hereinbefore expressed and upon no other trusts or conditions.

Plaintiffs aver said trust and conditions are in direct violation of said contract of March 3, 1868, and the mutual agreement made and entered into between the heirs and legatees of Abraham Oyster, deceased, on November 15, 1869, and were intended and designed to defraud the children of David K. Oyster, and said George Oyster now denies said Simon K. Oyster took the legal estate clothed with a trust in favor of the children of David K. Oyster or any trust in favor of David K. Oyster, and denies he took the said legal title under deed from Simon K. Oyster under any trust in favor of David K. Oyster, nor of the children of David K. Oyster, and says neither David K. Oyster nor the children of David K. Oyster have any interest in said real estate, under contract of March 3, 1868, or mutual agreement of November 15, 1869. Plaintiff avers George Oyster holds the legal title as trustee in his own wrong, that he has no equitable right or title in said real estate. That at the time said sale, partition and conveyance of said real estate to Simon K. Oyster by David K. Oyster, the children of David K. Oyster were Iola E., Mollie N. and William E. Oyster, all minors living with their father, who was in possessiou of said real estate at the time of such conveyance and has been ever since until Febuary 23, 1885, when he was put out of possession by the marshal of this court in execution in judgment of this court rendered March, 1883, except the property in section 1, township 60, range 6

When the action of ejectment was brought your oraters were advised, the legal title being vested in George Oyster, and David K. Oyster had no defense to said action of ejectment, that by the rules of practice in the United States Court they could not set up the facts alleged as an equitable defense to said action. That by advice of counsel they let judgment go for possession and one cent damages, George Oyster agreeing not to issue execution until May 1, 1884, that complainants might have time to file this bill setting up such equitable rights to said land. That complainants on September 6, 1883, did commence a suit in equity against defendants in this court to have said George Oyster enjoined from taking possession of said lands under said judgment and to have George Oyster declared a trustee of said lands for plaintiffs, but for the reason that an appeal was pending by David K. Oyster, and his accounts were unsettled and other technical objections this court declined to hear this case on the merits and dismissed plaintiff's bill without prejudice to any rights they had under the will and contract of March 3, 1868. George Oyster on Feburary 17, 1885, commenced an action in this court against David K. Oyster to eject him from lands in section 1, town-

ship 6, range 6, the farm where he had resided with his children, and recovered judgment for possession and damages for detention $1,256, and now threatens an execution. Plaintiff asks he may be enjoined from doing so by this honorable court.

On April 3, 1880, the Circuit Court of Lewis County, Mo., rendered final judgment finding David K. Oyster chargable as administrator with $37,511, on account of sales of real estate so made by him November 15, 1869, and $8,486.04, proceeds of peronality, making $45,947.04, and gave him credit with $21,994.04, leaving a balance of $23,953.04. The said court expressly found said George Oyster, Margaret Oyster and Margaretta Oyster had never paid David K. Oyster anything on account of the real estate conveyed to them, and Simon K. Oyster had never paid any part of the consideration for the lands conveyed to him. That David K. Oyster had a balance of $3,438.04 of the personality and $20,515 of the real estate for distribution among the legatees of Abraham Oyster, deceased, and said judgment is in full force. That by the contract of March 3, 1868, the said George Oyster, Margaret Oyster and Margaretta Oyster agreed to convey to David K. Oyster northwest quarter, section 7, township 6, range 3, and southwest quarter of section 12, township 4, range 7, Pike County, Ill. That George Oyster as executor of the estate of Abraham Oyster, deceased, December 3, 1869, sold said land in section 7, to James M. Pittey, for $2,000 cash and reported same as assets in the Orphan Court, Cumberland County Penn., instead of conveying same to David K. Oyster as agreed. That the quarter section in section 12, was worth $2,000 or more, but the parties did not have good title to same. That the children of David K. Oyster are now of age and plaintiffs are ready and willing anything due by David K. Oyster, if defendants are entitled to anything therein.

That said Abraham Oyster, deceased, owned considerable property in Cumberland County, Penn. That George Oyster under the will of Abraham Oyster was appointed executor, said Charles Oyster refusing to qualify, and as such September 18, 1867, he filed his first account showing a balance of $15,948,70 in his hands after paying all expenses. On Febuary 12, 1873, he filed his second account showing he had sold land in Pike County County, Ill., December 3, 1869, for $2,000, making $17,948.70, and he was entitled to credit $999.95, leaving a balance of $16,955.75 in his hands, the said George Oyster improperly obtaining a credit for $2,000 and $1560 interest thereon, the consideration named in the deed from Abraham Oyster in 1859, for the northeast quarter, section 7 township 3, range 2, in Illinois, the title to which afterward failed. They aver George Oyster not having paid any consideration for said land was not entitled to such credit, and that the Orphans Court had no jurisdiction to allow said

$3,560. That George Oyster in his said account improperly took credit for $7,030, as paid Margaret Oyster on her $10,000 legacy under said will, and he also took credit for $6,365,75 on account of the legacy in the said will contrary to the provisions of the contract of March 3, 1868, and in violation of his duty as executor. That the taking of such credits was *exparte*, that neither Margaretta Oyster nor plaintiffs had any notice of such claim. That it was the duty of George Oyster to distribute the $16,955.75 in accordance with the will and contract of March 3, 1868. That George Oyster ever since he obtained said deed from Simon K. Oyster pretends he holds the legal title to said lands for benefit of the legatees of Abraham Oyster, deceased, and repudiates and entirely denies the rights of the children of Abraham Oyster under the contract of March 3, 1868, modifying the will of Abraham Oyster, deceased,and the mutual agreement of November 15, 1869. Plaintiffs charge he took the title clothed with a trust in favor of said children with full knowledge of all the facts creating said trust as herein alleged and he holds the title to same subject to the equitable rights of plaintiffs.

Complainants are remediless at law and have therefore recourse to equity where their rights are cognizable. Complainants pray that George Oyster be restrained from issuing execution on the judgment in ejectment April 6, 1885, for possession of land in section 1, township 60, range 6, Lewis County, Mo., until hearing in this case, that the credit of George Oyster of $3,560 be declared null and void. That an account be taken of the rents of lands from which he ejected David K. Oyster, that plaintiffs may receive the $2,000 which George Oyster received from the sale of land in Pike County, Ill. That said George Oyster be bound to hold the lands conveyed to him by said deed dated February 10, 1881, by Simon K. Oyster in trust for benefit of Mollie Oyster, W. E. Oyster and Iola E. Oyster, subject any lien which may be found on the land for any balance due by David K. Oyster as administrator, on settlement of the amount in hands of George Oyster as executor. That George Oyster be decreed to convey to the children of David K. Oyster all said lands. That the court fix the amount to be distributed to each under the will of Abraham Oyster, the contract of March 3, 1868, and the mutual agreement of November 13, 1869, and for general relief.

Iola E. Oyster refusing to join as complainant under the influence of her husband, Simon K. Oyster, is made defendant. Duly certified copies of reports of George Oyster as executor and David K. Oyster as administrator are attached. Prays for process, etc.

JAMES CARR, Solicitor.

Filed April 15, 1885.

To this complaint defendant, George Oyster demurred, March 24, 1886.

ship 6, range 6, the farm where he had resided with his children, and recovered judgment for possession and damages for detention $1,256, and now threatens an execution. Plaintiff asks he may be enjoined from doing so by this honorable court.

On April 3, 1880, the Circuit Court of Lewis County, Mo., rendered final judgment finding David K. Oyster chargable as administrator with $37,511, on account of sales of real estate so made by him November 15, 1869, and $8,486.04, proceeds of peronality, making $45,947.04, and gave him credit with $21,994.04, leaving a balance of $23,953.04. The said court expressly found said George Oyster, Margaret Oyster and Margaretta Oyster had never paid David K. Oyster anything on account of the real estate conveyed to them, and Simon K. Oyster had never paid any part of the consideration for the lands conveyed to him. That David K. Oyster had a balance of $3,438.04 of the personality and $20,515 of the real estate for distribution among the legatees of Abraham Oyster, deceased, and said judgment is in full force. That by the contract of March 3, 1868, the said George Oyster, Margaret Oyster and Margaretta Oyster agreed to convey to David K. Oyster northwest quarter, section 7, township 6, range 3, and southwest quarter of section 12, township 4, range 7, Pike County, Ill. That George Oyster as executor of the estate of Abraham Oyster, deceased, December 3, 1869, sold said land in section 7, to James M. Pittey, for $2,000 cash and reported same as assets in the Orphan Court, Cumberland County Penn., instead of conveying same to David K. Oyster as agreed. That the quarter section in section 12, was worth $2,000 or more, but the parties did not have good title to same. That the children of David K. Oyster are now of age and plaintiffs are ready and willing anything due by David K. Oyster, if defendants are entitled to anything therein.

That said Abraham Oyster, deceased, owned considerable property in Cumberland County, Penn. That George Oyster under the will of Abraham Oyster was appointed executor, said Charles Oyster refusing to qualify, and as such September 18, 1867, he filed his first account showing a balance of $15,948,70 in his hands after paying all expenses. On Febuary 12, 1873, he filed his second account showing he had sold land in Pike County County, Ill., December 3, 1869, for $2,000, making $17,948.70, and he was entitled to credit $999.95, leaving a balance of $16,955.75 in his hands, the said George Oyster improperly obtaining a credit for $2,000 and $1560 interest thereon, the consideration named in the deed from Abraham Oyster in 1859, for the northeast quarter, section 7 township 3, range 2, in Illinois, the title to which afterward failed. They aver George Oyster not having paid any consideration for said land was not entitled to such credit, and that the Orphans Court had no jurisdiction to allow said

$3,560. That George Oyster in his said account improperly took credit for $7,030, as paid Margaret Oyster on her $10,000 legacy under said will, and he also took credit for $6,365,75 on account of the legacy in the said will contrary to the provisions of the contract of March 3, 1868, and in violation of his duty as executor. That the taking of such credits was *exparte*, that neither Margaretta Oyster nor plaintiffs had any notice of such claim. That it was the duty of George Oyster to distribute the $16,955.75 in accordance with the will and contract of March 3, 1868. That George Oyster ever since he obtained said deed from Simon K. Oyster pretends he holds the legal title to said lands for benefit of the legatees of Abraham Oyster, deceased, and repudiates and entirely denies the rights of the children of Abraham Oyster under the contract of March 3, 1868, modifying the will of Abraham Oyster, deceased, and the mutual agreement of November 15, 1869. Plaintiffs charge he took the title clothed with a trust in favor of said children with full knowledge of all the facts creating said trust as herein alleged and he holds the title to same subject to the equitable rights of plaintiffs.

Complainants are remediless at law and have therefore recourse to equity where their rights are cognizable. Complainants pray that George Oyster be restrained from issuing execution on the judgment in ejectment April 6, 1885, for possession of land in section 1, township 60, range 6, Lewis County, Mo., until hearing in this case, that the credit of George Oyster of $3,560 be declared null and void. That an account be taken of the rents of lands from which he ejected David K. Oyster, that plaintiffs may receive the $2,000 which George Oyster received from the sale of land in Pike County, Ill. That said George Oyster be bound to hold the lands conveyed to him by said deed dated February 10, 1881, by Simon K. Oyster in trust for benefit of Mollie Oyster, W. E. Oyster and Iola E. Oyster, subject any lien which may be found on the land for any balance due by David K. Oyster as administrator, on settlement of the amount in hands of George Oyster as executor. That George Oyster be decreed to convey to the children of David K. Oyster all said lands. That the court fix the amount to be distributed to each under the will of Abraham Oyster, the contract of March 3, 1868, and the mutual agreement of November 13, 1869, and for general relief.

Iola E. Oyster refusing to join as complainant under the influence of her husband, Simon K. Oyster, is made defendant. Duly certified copies of reports of George Oyster as executor and David K. Oyster as administrator are attached. Prays for process, etc.

JAMES CARR, Solicitor.

Filed April 15, 1885.

To this complaint defendant, George Oyster demurred, March 24, 1886.

To so much of the bill as seeks to disturb the judgment and decree of the Orphans' Court, of Cumberland County, Penn. To so much as prays an account to be taken of the administration of the defendant upon said estate, defendant demurs for that the plaintiffs have not stated a case as to entitle them to relief in a court of equity and asks whether he be compelled to make further answer.

J. D. S. DRYDEN, Solicitor.

The plea filed by George Oyster is to so much of said bill as seeks to charge land described in the bill with a trust in favor of the children of David K. Oyster. For that, on September 6, 1885, the present plaintiffs filed a bill of complaint in this Court against this defendant and his co-defendants stating, Abraham Oyster, died, seized of the land described in the bill, leaving a last will, being same will set out in present bill. That said will was admitted to probate in Lewis County, Missouri, in county court. That David K. Oyster was appointed administrator with the will annexed; also setting out the contract of March 3, 1868, being the same as is set forth in this bill. That the administrator, with the will annexed, made sale of the lands Nov. 15, 1869. That Simon K. Oyster made purchase of the lands described in this bill as trustee for the children of David K. Oyster as alleged in the present bill. That Simon K. Oyster accepted the trust and D. K. Oyster, June 6, 1870, conveyed the lands to said Simon K. Oyster with the understanding he was to hold same as trustee for the use of the children of David K. Oyster, stating and charging the deed made by Simon K. Oyster to this defendant Feb. 10, 1881, was procured by this defendant by fraud; that it vested in defendant the legal title only in trust for the children of David K. Oyster. Stating the judgment in favor of this defendant for possession of said lands. Asking this defendant be decreed to convey the lands to the children of David K. Oyster and for general relief. To which bill defendant and his co-defendants appeared and pleaded, Simon K. Oyster and this defendant answering, by which they denied the pretended trusts and denied the fraud alleged, charging David K. Oyster as administrator, was in arrears in divers large sums of money, and the land in dispute was chargable with the payment of said arrearages. That the deed to this defendant conveyed the title to said lands, to pay off and satisfy such arrearages. After hearing by decree said bill was dismissed without prejudice to any rights plaintiff might have in the trust devolved thereby in this defendant by the deed of Simon K. Oyster, the contract of March 3, 1868, whereby the right of complainant to institute this suit against the defendant is forever barred and stopped. That said decree was made Dec. 1, 1884, and is still in full force, all of which by this record and proceedings in this court on file, to which reference is had, will more fully appear, and

prays the judgment of the court whether he should make further answer, &c.

J. D. S. DRYDEN, Solicitor.

To this plea defendant demurred, and on the 16th day of October, 1884, the court overruled the demurrer, which complainant now says was erroneous. And afterward, on October 21st, 1886, the court sustained defendant George Oyster's demurrer to the bill of complaint and dismissed said bill with costs, which complainant now says was erroneous.

An appeal was duly allowed to this court on the 18th day of May, 1887, and on October 3, 1887, the record was duly filed in this Court.

JAMES H. ANDERSON,
Solicitor for Complainant.

ASSIGNMENT OF ERRORS.

Complainants and appellants say there is manifest error in the record as to the action of the Circuit Court. That defendant George Oyster's plea should have been overuled for the reason the decree in the former case set up as shown by the plea, was dismissed without prejudice to any rights the plaintiffs might have in the final administration of the trust devolved in George Oyster by the deed of Simon K. Oyster, dated February 10, 1881, and the contract of March 3, 1868, which is just what complainants are asking to be settled in this case. George Oyster holds the lands in trust under a deed from Simon K. Oyster, trustee, who held under the deed from David K. Oyster, administrator. It is to settle this trust, which the court in the former case declined to adjudicate and by decree dismissed without prejudice that this action is brought to settle the demurrer to the plea, therefore should have been sustained, and the action of the Circuit Court overruling the demurrer to the plea we cite as error.

Defendant demurred to portions of the bill as sought a settlement of the estate of Abraham Oyster, part of which was under George Oyster, executor in Pennsylvania and Illinois, and part in Missouri under David K. Oyster, administrator. It was one estate. It could not be finally settled in either court, in Orphans' Court in Pennsylvania, or in Circuit Court in Lewis County, Missouri, because neither could have jurisdiction of the matter in the other. It was all one estate, and equity was the only way in which it could be settled. The suit was brought in the Circuit Court of the United States between citizens of Missouri on one side and citizens of Pennsylvania on the other, the court having as a court of equity full jurisdiction for a settlement of the accounts and redemption by complainants of the property. If it should be found there was anything due from David K. Oyster it was to determine the controversy. There was nothing unsettled in either probate court. Final accounts had been made by George Oyster in Pennsylvania and by David K.

Oyster in Missouri, as shown by the bill in this case, a settlement in one court depended on the matters in the other court, neither had jurisdiction to settle. The settlement involved also the contract of March 3, 1868, modifying the will which the Probate Court had no jurisdiction over. This court had. The demurrer admitting all the allegations of the bill, the bill showed the basis on which the rights of each ought have been determined and the demurrer to the bill should have been overruled. We cite as error the action of the court in sustaining the demurrer.

JAMES H. ANDERSON,
Solicitor for Appellants.

BRIEF OF APPELLANT.

The dismissal of the former bill without predudice to the rights of complainants, under the will of Abraham Oyster and the contract of March 3, 1868, in and to the property described in the bill, left the matter open for complainants to enforce their rights in same way as if said former suit had not been brought. It was not *res* adjudicata.

Shields vs. Thomas, 18, How., 253, 261-2.

Green, Adm. vs. Creighton, 23, How., 90, 107-8.

McLaughlin vs. Bank of Potomac, 7, How., 220, 233.

Hawkins vs. Blake, 108, U. S., 422, 435.

The administration of the estate of Abraham Oyster, deceased, having been had partly in Pennsylvania and partly in Missouri, and final accounts having been approved in each jurisdiction, a final settlement of the estate could only be had in equity in a court having full jurisdiction of all the parties, particularly when the settlement involved considerations outside the administration of the estate like contract of March 3, 1868. The suit being for an account and redemption of the property, if there is any lien on it. The Circuit Court had full jurisdiction, the subject matter was properly alleged in the bill.

Manhattan Ins. Co. vs Broughton, 109, U. S., 121, 124.

Smith vs. McNeil, 109, U. S., 426, 429.

Haldeman vs. United States, 91, U. S., 584.

Phellps vs. Harris, 101, U. S., 370, 376.

Respectfully,

JAMES H. ANDERSON, Solicitor.

ARGUMENT OF APPELLANT.

This suit is supplemental to the case immediately preceeding it in the docket of this court, No. 113. When the former suit was dismissed without predudice this suit was brought, the bill so framed as to bring the subject matter more fully before the court, and obviate technical objections to former bill. We claim the other suit which is pending on appeal can reach the relief to which the complainants are entitled. That that case fully shows the rights of the parties and to the relief demanded, but as there had been no final settlement at the time of the former hearing, of the accounts of David K. Oyster, as administrator, an appeal to the Supreme Court being pending at the time. This bill shows the said appeal had been dismissed before this suit was brought and that final settlement had been had in both the Probate Courts in which administration of the estate of Abraham Oyster, deceased, was had, the County Court of Lewis County, Missouri, the court in which the will of Abraham Oyster was probated and in which David K. Oyster was appointed administrator with will annexed, and the ancilliary administration of George Oyster, executor in the Orphans Court, Cumberland County, Pennsylvania. George Oyster as the bill alleges, claiming he had a right to hold the lands, the legal title to which he held under the circumstances shown in this bill by a deed from Simon K. Oyster, trustee, as security for arrearages. This bill asks that an account be taken of the amount found to be in the hands of George Oyster, as executor, and of the amount found to be in the hands of David K. Oyster and if anything be found due the estate by David K. Oyster. That George Oyster be charged and the share of David K. Oyster be credited with $2,000 realized from sale of lands in Pike County, Ill., belonging to David K. Oyster. That the court ascertain the rights of complainants under the will of Abraham Oyster, contract of March 3, 1868, and mutual agreement of November 15, 1869. That upon full settlement and payment of any balance which may be found due by David K. Oyster, George Oyster may be decreed to convey the lands so in his hands, conveyed to by him Simon K. Oyster, trustee to complainants. This bill admitted and avers that reports of David K. Oyster showed he had realized, after paying debts and expenses, from the personal estate of Abraham Oyster, deceased, $3,438.04, which was in his hands. That he was chargeable with $20,515 on account of real estate which he had conveyed to Simon K. Oyster, trustee, and for the real estate he had conveyed to George Oyster, Margaret Oyster and Margaretta Oyster at the same time, he had received no payment in money. The bill alleges also that the reports of George Oyster in the Orphans Court, Cumberland County, Pennsylvania, showed $14,955.75 net was realized by George Oyster from the estate in his hands as executor, and that there was $2,000 realized by him from

the sale of land in Illinois, which under contract of March 3, 1867, belongs alone and solely to the share of David K. Oyster in the estate of Abraham Oyster, deceased.

So that the estate of Abraham Oyster, deceased, as shown by the allegations of the bill (when the bill was filed) consisted of the personal estate in hands of David K. Oyster		$ 3,438 04
In hands of George Oyster from property of estate		14,955 75
In hands of George Oyster, proceeds of land in Pike County, Ill., which, by contract of March 3, 1868, was to be conveyed to David K. Oyster		2,000 00
Real estate conveyed to Simon K. Oyster, trustee		20,515 00
Making together		$40,909 79
The bill alleged that of the real estate conveyed to Simon K. Oyster the home farm was first bid in by Simon K. Oyster, trustee for complainants, at		$12,000 00
That the 640 acres in Oyster prairie, which, under the contract of March 3, 1868, was to be conveyed to David K. Oyster's share to make it equal with the other shares, was bid in at		3,200 00
That all the balance of the estate was to be bid in by the heirs without reference to its price or location and to be divided by mutual consent into four equal shares and one share was to be conveyed to each of the heirs, and this was done, each getting land of the same value of the others, the land so conveyed to David K. Oyster's share being the balance of the amount conveyed to Simon K. Oyster as shown by David K. Oyster's report, $20.515, to wit		5,315 00

The bill asks an accounting be taken of the rights of the parties in the whole premises and each party be decreed his interest in the property aforesaid.

We claim plaintiff's rights as shown by this bill, demurred to and admitted, to be balance in hands of David K. Oyster, real estate		$20,515 00
Less the amount for 640 acres	$ 3,200 00	
Less the amount one-third the homestead	4,000 00	
Less the amount one share conveyed to him	5,315 00	
		12,515 00
Leaving a balance due by him on real estate		$8,000 00

Personal property in hands David K. Oyster	$ 3,438 04	
Estate in hands of George Oyster.....	14,955 75	
Total personality to be divided....	$18,393 79	
One-fourth of which belongs to David K. Oyster	$ 4,598 45	
Proceeds of sale, lands in Pike County, Ill.	2,000 00	
Cash to belong to David K. Oyster's share to make his share equal with the others by contract of March 3, 1868.....	5,000 00	
	$11,598 45	$11,598 45
Balance to his credit in above.....		3,599 45
He had a balance in his hands of.....		3,438 04
Leaving a balance to his credit in above		$ 160 41

The contract of March 3, 1868, provided for some matters not considered above, 160 acres of the 320 acres of land in Pike County, Ill., which was to be conveyed to David K. Oyster by the other parties, $1,250 each to George Oyster and Margaret Oyster, which David K. Oyster was to pay them. The bill thus showing the facts, setting out the rights of the parties in a case which, we claim, the court had jurisdiction, and in a case where complainants had the right in equity to redeem their property on payment of any claim defendants might be found to have upon it. We submit the demurrer should have been overruled instead of which the court dismissed the bill, to correct which error, we have appealed to this court. We submit we have the right to a reversal of the order on demurrer.

The plea set up by defendant, George Oyster, we claimed, was not well taken. The former bill was dismissed without prejudice to the rights complainants set up in this bill and did not have the effect of res adjudicate authorities, to sustain which, we cite in brief.

We respectfully ask the reversal of the action of Circuit Court in both the rulings on the plea and demurrer.

JAS. H. ANDERSON,
Solicitor for Appellants.

Office Supreme Court U. S.
FILED.
DEC 6 1890
JAMES H. McKENNEY
CLERK

IN THE

Supreme Court of the United States.

OCTOBER TERM, A. D. 1890.

MOLLIE N. ALBRIGHT, WILLIAM E. OYSTER, AND DAVID K. OYSTER,
Appellants,
vs.
GEORGE OYSTER; MARGARET OYSTER; MARGARETTA OYSTER, Executrix of Simon Oyster, Deceased; SIMON K. OYSTER, AND IOLA E. OYSTER, his Wife,
Respondents.

No. 134.
IN EQUITY.

STATEMENT, BRIEF AND ARGUMENT FOR RESPONDENTS.

D. P. DYER,
Solicitor for Respondents.

A. R. FLEMING & CO., PRINTERS, 522 N. Third St., ST. LOUIS, MO.

IN THE

Supreme Court of the United States.

OCTOBER TERM, A. D. 1890.

MOLLIE N. ALBRIGHT, WILLIAM E. OYSTER, AND DAVID K. OYSTER,
Appellants,
vs.
GEORGE OYSTER; MARGARET OYSTER; MARGARETTA OYSTER, Executrix of Simon Oyster, Deceased; SIMON K. OYSTER, AND IOLA E. OYSTER, his Wife,
Respondents.

No. 134.
IN EQUITY.

STATEMENT.

This cause arose out of the facts appearing in case No. 133, pending on appeal in this court between the same parties.

After the complainants were defeated in that cause, they filed a new complaint, alleging as a ground of recovery the same parol trust, which they had alleged in their bill of complaint in that cause, as well as the same frauds on the part of the defendants. Claiming their rights under that parol trust, they further allege their

willingness, in pursuance of that trust, to pay any indebtedness due from David K. Oyster. The prayer of the bill lacks definiteness, inasmuch as it prays both for a decree for the conveyance of the lands in dispute to the complainants, and for a decree that these lands be held by George Oyster for the benefit of the complainants, subject to a lien for any indebtedness due from David K. Oyster.

The bill of complaint also, for the purpose of the accounting, shows that there was a final settlement and adjudication of the accounts of David K. Oyster in the courts of Missouri, and that the administration of the estate in Pennsylvania is pending in the courts of that State.

There was a demurrer to the part of the bill which sought for the accounting, which has been finally adjudicated in the one case, and which was pending in a court of competent jurisdiction in the other; but the matter in controversy was determined upon a plea of the judgment of said cause No. 133 as *res adjudicata*. This plea states in detail that the identical averments, which are contained in the bill of complaint in the action at bar, were contained in the bill of complaint in said cause No. 133, and that, after a hearing on the latter bill of complaint, it had been dismissed without prejudice to any rights the plantiffs might have in the trust devolved thereby on George Oyster, by reason of the deed executed to him by David K. Oyster, or the contract of March 3, 1868. And we may here add that the bill of complaint especially states that this deed upon its face was "in trust nevertheless that he, the

said George Oyster, shall and may with reasonable diligence proceed to receive and take possession of said lands and sell the same, whomsoever he may, in mass or parcels, for such price as he may deem advisable, to take the purchase money and make conveyances, and out of purchase money pay expenses of this trust, *and the residue of purchase money shall be held as assets in his hands as executer in Pennsylvania, of the last will of Abraham Oyster, deceased, and be distributed and payable by him as directed by the will, in such proportions and share as the legatee, would at the time of such contemplated distribution be entitled.*"

So that the allegations of this plea, in connection with this allegation in the bill, shows a decree expressly affirming the trust declared in that deed, and expressly denying the parol trust alleged by the complainants as the basis, the sum and substance of their cause of action.

The Circuit Court held that its decree in the cause No. 133 was *res adjudicata*, and, accordingly, overruled a demurrer to the plea of the defendants, and dismissed the bill in the present action; the complainants accordingly appeal.

BRIEF.

It is not necessary to determine, whether, if the parol trust, upon which the complainants base their action, were established, a bill in equity for the accounting would lie, when the accounts of David K. Oyster as to the administration in Missouri were adjudicated in the courts of that State, and the accounts of George Oyster, as executor in Pennsylvania, were pending in a court of competent jurisdiction and were not yet finally settled. That matter was not considered by the Circuit Court, the demurrers addressed thereto being undetermined.

The only question which arises in this court is the sufficiency of the plea of *res adjudicata*. That was deemed a very plain matter by both the Circuit Court and district judges, as will appear from the opinion in the transcript of this cause. And indeed it seems so plain that we are not inclined to take up the time of this court with any amplification of it.

The complaint is predicated upon an alleged parol trust, under which the complainants claim their interests in and to the subject matter of the controversy. The plea states that a former complaint, identical so far as concers the existence of this trust, and the alleged deviations from and frauds upon the same, and that in that action a decree was rendered dismissing the bill, without prejudice however to other possible rights of the complainants under the express provisions of the deed, which they sought to have canceled as a fraud upon said trust.

The averments of the plea are to be taken as confessed for the purposes of this appeal, and, if they are true, they clearly establish the defense to which they are addressed.

Bryan *v.* Kennett, 113 U. S. 179;
Aurora *v.* West, 7 Wall. 82.

Respectfully submitted,

D. P. DYER,
Solicitor for Respondents.